This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

UK 905 MAC
McKelvie's Megaphone history and la
HARVARD LAW LIBRARY ARB4565
3 2044 038 069 472

McKELVIE'S
MEGAPHONE

ARD
N
LIBRARY

Digitized by Google

HARVARD LAW LIBRARY

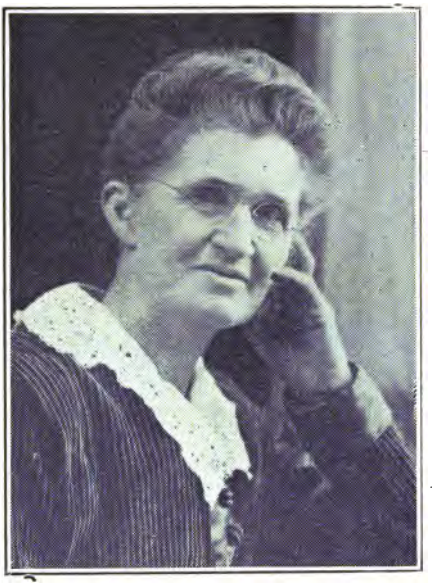
Received MAY 26 1920

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google



Dedicated to the Memory of My Dear Mother, whose attainment and nobility of Character have been the inspiration and benediction of my life.

Digitized by Google

Digitized by Google

Digitized by Google

McKELVIE'S MEGAPHONE

HISTORY AND LAW

BY

OTIS A. McKELVIE, LL.B.

"The Compromise Attorney"

Admitted to practice as an Advocate, Counselor, Proctor and Solicitor in California Courts and the United States District Court.

Former student, graduate and instructor of Commercial Colleges, Law Schools and Industrial Institutions in California, Florida, Illinois, Louisiana, Nebraska, New York, Pennsylvania, Washington, D. C., and Canada.

Formerly with leading daily, weekly, monthly publications and other business concerns in Chicago, Denver, Lincoln, Nebr., Los Angeles, New Orleans, Oak Park, Ills., Salt Lake City, San Francisco, St. Louis, U. S. A., and London, Canada.

Author of the books and pamphlets entitled: Opportunity and True Success, National Progressiveness, Vote as You Think, George Washington "The Father of Our Country," and Luther Burbank "Master of Modern Horticulture."

UK
905
MAC

Distributed by

ATTORNEY OTIS A. McKELVIE, LL.B.

Lock Box 1108

LINCOLN, NEBRASKA

Prices: Paper cover, $1. Cloth cover, $2.

Digitized by Google

TK
M1347m

Copyrighted, 1920,
By
OTIS A. McKELVIE

MAY 26 1920

Digitized by Google

CONTENTS.

	Page
Introduction	5
Preface	6-8

PART I.

Law Explained	9
Ancient, Roman and English History and Law. Allodial Tenure, Feudel Tenure. Reign of the Kings. Constitutions, Statutes and Treaties	10-27

PART II.

English-American History and Law. Reign of the Kings. Colonization of the New World to The Declaration of Independence	28-40

PART III.

Roman Civil Law	41
English Jurisprudence	41
Equity Jurisprudence	43
Common Law	46
Code Law	47
Municipal Law	48
International Law	49
Criminal Law	50
Constitutional Law	52
State Constitutional Law	54
Personal (Civil) Rights	57
Domestic Relations	59
Partnership	60
Corporations	62
Personal Property	65
Real Property	66
Wills and Administration. "Succession After Death"	69
Negotiable Instruments	71
Guaranty and Suretyship	72
Contracts	73
Agency	75
Bailment and Common Carriers	76
Legal Ethics	77
The Advocate	78
Maxims of Jurisprudence	80

Digitized by Google

Digitized by Google

INTRODUCTION.

I will explain about volume one of History and Law because it covers the history of and the law in all its branches so clearly and briefly that anyone can easily understand by its use. In fact, it is a key to history and law prepared for the benefit of commercial, high school and law students; for business men, and for people in every walk of life.

This compact volume clearly outlines my thirty years' experience in school work, boiled down to meet the requirements of others in this line of thought after having thoroughly, by diligence and a heavy expense, studied about 100 leading law text books during that period.

A requirement for the business man because it puts him in touch with the law in all its branches so clearly that a few hours time will enable him to understand his every day affairs more readily by its use.

Indispensible for the student because it gives him a solid working foundation of history and the law in a few days by its use before or after taking up his studies either in a resident college, correspondence school or in his learning during spare moments at home.

And very valuable for every young person who wishes to prepare for the historical, legal and political needs of a useful life. Outside of its general usefulness for both the young and the old of either sex, it is especially designed to prepare you with an ability to cast an intelligent vote, most needed for the life and prosperity of our country.

By the use of a copy during a few spare hours, you have an opportunity to acquire a brief outline of that which has cost me many years of hard study, deprivation and a few thousand dollars.

Very respectfully,

OTIS A. McKELVIE.

Digitized by Google

PREFACE

In behalf of any one who wishes to outline a general survey of history and law without being loaded with a variety of matter which is confusing and would occasion you to desert your business affairs, and would cause the commercial, high school or law student to be carried heavily through his studies with much labor and delay, this volume is intended and highly dedicated.

Spare time, when carefully executed, will administer a most useful and wise entertainment to the student and business man of every rank and profession who may encompass a foundation and the essential principles of history and law by reading the following pages which point out the duties of a citizen and sanctifies the rights of an individual, both absolute and relative. These duties and rights must be known, acknowledged and fulfilled if our nation is to endure and exist forever, and answer the high social and patriotic purposes for which it was established by our forefathers.

Acquire a practical education for the benefit of yourself in particular and others in general. No difference what may be your calling in life, the training will stand you well in hand. Every individual should be familiar with the history and laws of his country. A competent knowledge of the laws of that political government and society in which we live is the proper accomplishment for every one. As to the benefit of a legal education, you should have no doubt. By the proper training, the world may be revolutionized, which should stop bloodshed and carnage seemingly brought about by ignorance, race prejudice and a lust for the almighty dollar.

The law is more volumous now than in Blackstone's time. Thousands of authors and text writers compete for mastery of the ever expanding science. And it becomes more complex because you are obliged to penetrate the English common law, also delve into half-forgotten Civil and Roman jurisprudence. Further enthusiasm is checked by a discovery that there is no key to the several branches and varied store of the art and profession, the general difficulties being a lack of money and time which can be done away with to a great extent by the use of this small volume as a foundation work of history and law.

Your desire to study law should not be interrupted by uncomprehendingly delving too deeply into the work before taking a general survey of the entire science. Note that different branches of the profession are mutually related, consequently, the study of one will assist in understanding the others if handled systematically. By the use of this volume, you may avoid these difficulties by having first built a working foundation of law, relating to its history from the time of the Codes of Hammurabi and Moses, through the periods of Roman Civil law and English jurisprudence, to the present, taking up in succession the several branches by a series of brief comprehensive historical and explanatory treatise with care and caution to avoid having discarded a single degree essential and pertaining to the art.

A fair knowledge of the English language is a sufficient general preparation for any person who wishes to familiarize himself with law points. The time required depends entirely upon available spare moments and the method by which you proceed. System is the most important factor if your time is reduced to the limit, which is the mission of this compact valume. It would require fifty years time to study two thousand octavo volumes of four hundred pages each. Within the covers of this small volume, I have endeavored to condense a working foundation of history and the law by which you may assimilate the main elements in a few days' time, further making it possible for you to cover subsequent volumes with ease and efficiency.

Spare time only is required for completion of any profession. It isn't necessary that other study and work should be put aside. Language, history and law may be studied simultaneously and be of increased benefit without making it impossible to continue any other branch of learning, and follow your usual avocation. Thousands of our capable business men have done so while holding positions in former years. Try to excel the example of the man whose time is methodically divided. It isn't how much we read, and the time required, but what we read, how it is read and what is assimilated. Small

Digitized by Google

portions fully digested in a few minutes period is far better than having covered all indifferently at one time.

As a body, we are responsible for the state of the law and its administration. Knowing this, and that each individual is responsible for his own actions, and the actions of those placed under his control, he can not be too well versed in the rules pertaining to the law as framed by which we are governed.

There is, perhaps, no profession, other than the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There are pit-falls at every step; man-traps everywhere, and the mere youth, at every outset of his career, needs the prudence and self-denial as well as the moral courage which will fortify riper years. An education and a high moral principle is his only safe guide; the only torch to light his way amidst darkness and obstruction.

Each individual should know his rights and duties which the law confers and commands, for when ignorant we are personally responsible, civilly and criminally for any and all transactions of the fixed rules of the state of society by which we are governed. The chief benefit of an education is covered by an ability to protect personal interests by having regulated domestic and public relations properly. In consequence, many legal lore requisites are required and demanded.

And yet it is astonishing that in a progressive age, and with a progressive people in a land literally dotted with free schools and progressive institutions, the great mass of our citizens should be utterly unacquainted with the laws regulating ordinary business transactions; the laws which govern the acquisition and disposition of real and personal property; the laws governing contracts and fiduciary relations, and with commercial usages and the statutory provisions which govern the civil and criminal liability of individuals.

Every citizen should be familiar with the laws of his country. You are dependent on these rules and regulatons for the enforcement of your rights. If we know not our rights, how can we enforce them? Without this knowledge, you are in continued dread of some compelling and irresistible influence which you may offend at any moment. Your most sacred rights may be infringed upon by others and, though redress may be within reach, you do not know it. In casting a vote, in respect to that vote, you are a law-maker. To cast a vote intelligently, you should have some knowledge of the law governing it, and the end which it is expected to protect. As so-called free American citizens, we should retain this priceless heritage bestowed by our forefathers. We should acquire a knowledge of and a love for those just rules of action by which we are governed.

The time has come to dispel ignorance of the masses in regard to the laws of our land, and for a general study of that science which distinguishes a standard of right and wrong; which teaches how to establish the one and prevent, punish or redress the other; which employs in its theories the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart; a science which is universal in its use and extent, and accommodating to every individual who sees fit to master the accomplishment.

From birth until death, individual interests are perpetually obligatory in connection with the laws of our commonwealth. Every personal and property right; every business, domestic and social relation; in fact, every incident of your career is defined and regulated by its jurisdiction. In consequence, law should be taught in every school and progressive institution, it being far more important and practical than some of the dead and obsolete ideas which are being pounded into unfortunate minds.

A person is never too young nor too old to learn. You should train for an ability to retain thoughts collected and ideas gleaned from the kind of books that elevate the mind. Life is a school, you should educate for the final examination. Those who ambitiously and willingly prepare for the test will be amply rewarded. Others lose positions offered the deserving. Any one can spare a few moments each day for completion of his choice of learning. We should be desirous of attaining a higher intellectual and social plane of which a knowledge of law will greatly assist.

Digitized by Google

Take advantage of the opportunities offered you and future difficulties will vanish. Labor without learning, intellectually speaking, leaves you as you were. Opportunities neglected are never recovered—they are gone forever. Our great men have assisted wonderfully in eliminating ignorance and injustice. However, each individual should acquire ability. And although our distinguished Americans have achieved much, ignorance and injustice still remain, and will predominate until other true-hearted statesmen approach the ranks inspired with an ability to overcome new and more vital forms of injustice which are being imposed daily on the oppressed.

As a rule, the cost of a legal education is such that many have been hindered from attempting it on account of the seemingly heavy expense and amount of time required. Correspondence courses range from one hundred dollars upward. Residence courses cost from five hundred up, an amount which hinders a great many from the study of law. To eliminate these difficulties, this small volume has been prepared in a manner which outlines the entire work so briefly and clearly that, if studied, it should save time and expense to a great extent regardless of any correspondence or residence course that you might wish to take, or regardless of the fact that you figured on completing the work by studying during spare time while employed.

Fair-minded men, and even noble and spirited women know the urgent need and value of a legal training. Even though you do not expect to follow the profession, in your domestic and public affairs, the training will stand you well in hand. The many reasons apply with added force to either sex. It is sufficient to say that women have secured the right to practice the profession. If for no other reason, she should study it in readiness to make a livelihood if unfortunately thrown upon her own resources, thus be able to control her property interests and personal rights. A business woman has the same responsibilities as a business man, consequently, she should be sufficiently capable of meeting them with the same unerring accuracy. And she should be capable of appreciating her husband's ability and intelligence, if so credited, so that she may not be entirely cut off from his association in business affairs. In fact, every man and woman is duty bound to acquire a fair knowledge of law. When accomplished, the gain in prospects may mean the first step in a career of decided usefulness. Don't lose a golden moment! If so, no reward will be offered. It is gone forever.

Digitized by Google

HISTORY AND LAW

BEFORE entering historical details, it seems advisable to outline a definition for the word "law," a single syllable which explains the topic to be discussed. No doubt, the word "law" is subject to more elastic and uncertain definitions than any other in the English language. To the law expert and to the one versed in practical wisdom, with a comprehensive mind, law presents itself under a different apearance in each case. By leading authors, we find law defined as: a rule of action; a rule of civil conduct; a rule of human action or conduct; a regulation of civil action or conduct imposed by political authority; a correction of human action or conduct imposed by a superior; and as the eternal and unlimited energy from which all things develop.

Thus: in its widest sense, law may be rightfully termed "A rule of action, prescribed by a superior in which an inferior is bound to obey." In its most comprehensive and general sense, it signifies "a rule of action dictated and promulgated by some superior and which the inferior is bound to obey." It is "a rule of civil conduct or human action, addressed to all mankind, commanding the right ond forbidding the wrong as enforced by common and statutory provisions under supreme authority.

Holland defines law as: "A general rule of external human action, enforced by a sovereign political authority." Robinson defines law, in its technical sense, as "A rule of civil conduct, prescribed by a political authority, commanding certain things as necessary to, and forbidding other certain things as inconsistent with the peace and order of society." Blackstone defines law as "A rule of civil conduct prescribed by the supreme power in a state, commanding what is right and forbidding what is wrong."

Blackstone's definition and outline is considered best and, to be more comprehensive, it may be analyzed as follows: Law is "a rule" because it is permanent and uniform, and not a sudden order from a superior. Furthermore, it is "a rule" in the sense that it is an injunction or order and not advice as the obligation is the result of a command and not an agreement It is a rule" of civil conduct" because it refers only to duties owed by a citizen to his political society, and not a moral duty which is an obligation of revealed or divine law, a rule of action which the law of nature imparted by God only. It is a rule of civil conduct "prescribed" because it is published and promulgated, and not a mere secret resolution. It is a rule of civil conduct "prescribed by the supreme power in a state" because it is the sovereign authority who dominates the command. It is a rule of civil conduct prescribed by the supreme power in a state "commanding what is right and forbidding what is wrong" because the boundaries of right and wrong are ascertained and established by the law.

Law may be applied without a mark of distinction to all kinds of actions whether alive, dull, intelligent, unwise or beyond human power. For example: the law of attraction; of motion, imparted by God; of nations; or of optics the science of light. Facts and suggestions as outlined on the following pages will not denote nor demonstrate law as an action in general, but as human action and civil conduct, including its historical developments briefly pictured with an outline of the different branches of law and the maxims or precepts by which man, a creature thereof—endowed with reason and a free will, is commanded to make use of those faculties to the best of his ability for the general regulation of his behavior.

The origin of law, like the origin of language, is a subject which has been under frequent unprofitable discussion. Extravagant claims have been uttered by enthusiastic writers as to the nature and scope of law. Our own legal system has been deliberately characterized as the perfection of human reason, and jurisprudence (the science of law) itself magnified as the knowledge of things beyond human reason. The mission of law has been falsely or erroneously stated to be the working out of the perfection of indi-

Digitized by Google

vidual character. If this were accomplished, it would leave little scope for the exercise of domestic and religious virtues.

Consequently, it is feared that as a rule the source of law is not properly located. The crude and shallow observer has been led to believe that it sprang from some legislative hall; that it was created as a finished product, then imposed on man by some external authority. Study in historical jurisprudence (the science of law) is essential to thoroughly demonstrate and show that it is the product of development resulting from a gradual and slow unfolding of national life. It has its origin and far-reaching development in the necessity of upbuilding mankind, first made visible in the crude state of rude neighborhood customs of common law, later being promulgated by some kind of ancient judicial authority sanctioned by a court of justice, and later, when its medieval (middle age) changes and developments ceased, it took on a final form by means of statutory enactments.

In fact, our laws cannot be definitely traced to any one particular source. The most powerful factors developed from the many important principles which were found in different laws of all nations during ancient and medieval times whereupon these legal forces, which include customs, maxims, judicial decisions and legislative enactments, have been woven into human ties which bind this great and glorious Republic into a union of liberty, God's gift to man.

LAWS OF HAMMURABI.

About 2050 B. C., Hammurabi, the sixth of the series of the first Dynasty of Babylon who ruled half a century, promulgated the Babylonian Code of Laws which were carved into paragraphs on a column (block of diorite) about seven and one-half feet in heighth and about five feet in circumference. Illustrated thereon, King Hammurabi was pictured as if lifting his right hand to heaven—a position which explains an old Babylonian expression. In fact, that particular custom has been preserved until this day as explained by the lifting of the right hand upon taking oath of acknowledgement as required by our present law.

On the column, beneath King Hammurabi's illustrated position, was inscribed the Babylonian text of laws and outlined in about two hundred and eighty paragraphs, each beginning with the word "if," all of which occupied sixteen columns of about seventy-five lines each on the front portion, and twenty-eight columns of about one hundred short lines each on the back portion of the block of diorite. These inscriptions represented the essence of King Hammurabi's legislation and have been handed down by his successors in Babylonian history almost unchanged; independent of the late Mosaic Code; of the Roman Twelve Tables; or of the old German collection of laws, etc.

A Code is a body of law promulgated by legislative authority with the intention of setting forth, generally and systematically, principles of the entire law derived from enactments or precedents, or the one new law which covers the whole new law of jurisprudence. "Code" and "digest" differ in that a "digest" consists of an orderly collection and classification of existing statutes of a State or Commonwealth, while a code is established as above mentioned.

A few lines before entering English law, in reference to Roman Civil Jurisprudence, is not out of place. In other words, the Municipal Roman Code —a modification of which is still in use in Latin countries on the European continent and in the state of Louisiana, U. S. A.

Civil law may well be termed "that rule of action which every city, state, commonwealth or nation has established in particular for itself." Or "that system of jurisprudence established, held and administered in the Roman Empire, especially as promulgated in the compilation of Justinian's Institutes and those of his successors." More briefly speaking, the Roman law and the Civil law are synonymous terms which mean one and the same system of jurisprudence.

The Civil law or Municipal Roman Civil Code of laws, during about twenty centuries has illustrated the rise, maximum development, decline and death of an established system of jurisprudence which experienced five distinct periods, dating (1) from the origin of Rome, 754 B. C. (754 years before

Digitized by Google

Christ), to the law of the Twelve Tablets, 449 B. C.; (2) From the law of the XII Tables to the principate of Augustus, 27 B. C.; (3) From the principate of Augustus to Diocletion, 284 A. D. (284 years after Christ); (4) From Diocletion to the fall of the Western Empire, 476 A. D.; and (5) from the fall of the Western Empire to the fall of Constantinople, 1453 A. D.

Knowledge translated without written memorials has placed 754 B. C. as the time in which Rome was founded, originating from a small fortified town of which the establishing was attributed to a leader named Romulus. During the first or legendary period, Rome numbered one hundred families whose heads formed the Senate of Romulus.

449 B. C., beginning the second period, the law of the XII Tables were compiled by the Curiae, a court of Justice, because the people demanded written laws. The Curiae (Comitia Curiata) comprised the three wheels of government, as follows: The King (Rex), the Senate and (3) the Assembly which included three tribes of ten each, thirty in all.

27 B. C., the third period, the principate of Augustus, the dictatorial powers which had been confined to Augustus resigned and made the State revert to the authority of the people and the Senate, judging from his point of view, and the people seemed to have believed it. In consequence, he posed as absolute master of the Roman Empire until Diocletion, 284 A. D., an administration of unacknowledged absolute power which has been termed by the Romanists (the Imperial Duarchy) a power divided between the Emperor and the Senate.

284A. D., commencement of the fourth period or Diocletion, the conditions of the Empire were completely transformed. Thus, the Roman world took on four distinct divisions, namely: (1) The East, (2) Gaul (France), (3) Italy, and (4) Lllyria, all under the supervision of praetorian prefects. 325 A. D., the transformation became more profound under the accession of Constantine in respect to a new capitol, a new religion and new titles of nobility.

426 A. D., the law of the citations (a constitution) was first published in the Western Empire under the name of Valentian III. although it sprang from Theodosius II. of the Eastern Empire. 438 A. D., the Theodosian Code (a collection of the Constitutions of the Roman Emperors) was published by Theodosius II. of which the manifold forms of imperial decisions have come down to us. Therefor, the judicial documents of the fourth period, 284 A. D. to 476 A. D., which are but complications of Imperial Constitutions, consist of the Gregorian and Hermogenian Codes.

The year 476 A. D. gave birth to the fifth period of Roman Civil law and history. In 527, the Corpus Juris Civilis (body of the Civil Law) comprised in a chronological order the Code, the Digest, and the Institutes as compiled under the supervision of Justinian. The code is a preparation of the Imperial Constitutions brought down to the Corpus Juris of this date. The Digest is a collection of the incomplete work, fragments of ancient jurists' work, also called the Pendects an abridgment of the Civil Law. The original text of the Digest was altered by Justinian's commissioners under the instructions of President Tribonian, Magistrate of the Imperial Palace. The Institutes of Justinian's Corpus Juris are the work of Dorotheus (law professor of Berytus) and the efforts of Tribonian, law professor of Constantinople. The Decisiones represent the fifty decisions by which Quaestor Justinian decided points of law left uncertain by prior constitutions to the publication of his Corpus Juris. The Decisiones (fifty decisions) were completed by having prepared following constitutions which were called "The Novels."

About 900 A. D., the Basilica Codes, undertaken under the instructions of Basil of Macedonia from whom they bear the name, were compiled by Leo the Philosopher. In 1453, which concludes the fifth and last period of Roman Civil law, these Codes represented the last state of the Roman law at that time which is the date of the fall of Constantinople.

This brief outline of Roman Civil Law will furnish you a working basis in which to proceed wth the study of Roman Jurisprudence, notwithstanding the fact that the State of Louisiana is the only one in America which has pictured Civil Law from the Roman system.

Digitized by Google

COMMON LAW OF ENGLAND, 450 B. C.

As a working basis, let us never forget that the main foundation of American law dates back to the common law customs (unwritten law) of England, 450 years before the birth of Christ. English common law represents the immemorial customs as used in England by her people until 600 years after the birth of Christ when Aethelbert the first Christian king caused the common law of his people to have been set down in writing, the first step taken to codify the unwritten law of England in imitation of the Roman Civil law. These laws of King Aethelbert include the oldest written English Code, and bear his name.

BIRTH OF BRITTANIA (England), 450 B. C.

Look from 1453 A. D., which dates the fall of Constantinople and concludes the fifth and last period of Roman Civil Law, to the birth of Brittania (England) which event took place about 450 B. C., three hundred and four years after the founding of Rome in 754 B. C., and acquire a general idea of the historical conditions of England as they existed at that particular time.

Cross the English Channel or Straight of Dover, the latter being but nineteen miles in width, and you have covered the waters which played an important part in explaining the history of Great Britain (England) for it has been told by geologists that at that time the British Isles were connected with Europe's mainland, Had this been true during Napoleon's time he no doubt would have made the conquest of England. In such an event, as to the results of British historical changes, no one can say although that history would have been a different one.

As it were, owing to the boisterous Channel which separates England from France, England's Queen Elizabeth secured a bloodless victory when King Phillip of Spain ordered the Great Spanish Armada, a 120-boat fleet, to subjugate the British Dominion. But, while a fierce storm at sea raged, the Spanish Monarch's strong Armadian fleet was dashed to pieces on the North shore of Scotland.

If this is true, physical conditions have a terrible influence in moulding the history and destiny of a people. This could be more fully explained were you to study the history of our United Kingdom and compare her progress with that of other countries. The British Isles (England, Scotland, Wales and minor possessions, as pictured on the map) are a very unimportant portion of the earth's surface, embracing an area not so great as that of the thirteen New England States of America which occupy but an iota of our own dominion.

Heroditus made mere mention of the British in his writing, about 450 B. C., three centuries after the founding of Rome when the Ancient Phoenecians were said to have visited the British Islands, although what Caesar explained in his famous Commentaries is the earliest authentic account of our English-American Government. He spoke of the Celts as belonging to the Indo European Aryan family, a tribe originally taking rise from the Himalaya Mountains in Asia. Their migration to Europe was followed by a later Aryan race called the Tutons, then by the Lithunians and the Slavonians. At this time, we find the Celts in Western Europe, the Tutons in Central Europe and the Lithunians in Eastern Europe while later the Slavonians, Hindus, Persians and other Aryan tribes were inhabitants of the European dominion.

BRITTANIA (English) CELTIC PERIOD.

The Celts emigrated from Western Europe to Brittania (England). This period dates from the earliest known English inhabitants and extends to the first Roman Invasion of Brittania. The word "English or England" derived the name from the low German tribe called "Angles." During the time of the Romans, England was known by the name "Brittania."

INVASION OF BRITTANIA (England) BY THE ROMANS.

55 B. C., when Brittania (known in the future as England) was invaded by the Romans under Julius Caesar, the Island was entirely inhabited by Celts who were driven from their homes, taking refuge in the mountains to evade the Roman army. This historical period may be known only by the

Digitized by Google

writing of Caesar, the Roman General who made the invasion of England and occupied the Southern lowlands during his domination until departure of the Romans from the Island, 436 A. D., which marks the beginning of Anglo-Saxon History.

ANGLO-SAXONS IN ENGLAND.

436 years after the birth of Christ, at the beginning of the history of English law, the Anglo-Saxon race, better known as our forefathers, emigrated to the British Islands in search for booty, the almighty dollar, and their descendants are still hunting—but in a new land. We speak of the English and American people as "Anglo-Saxons" on account of being descendants of the Anglo and Saxon races who formerly immigrated from the Northern German population to England.

The Angles, the Saxons and the Jutes were the three Low-Dutch tribes inhabiting the East coast of England, at this time, which stand out so conspicuously in history of the British conquest, each race taking its own political and social system, the germ being changed and distinctly evidenced from generation to generation and, to the present, abiding untouched in its true substance after having lived and grown through nearly fifteen hundred years into the law and social developments of England and America.

When Hengest landed on the Isle of Thanet, he found England (formerly known as Brittania) inhabited by a people of Celtic and Roman blood, governed by Celtic-Roman laws and speaking the Celtic-Latin tongue. This historic place was studded by peopled cities but, when after the battle of Deorham, the conqueror looked back over the field he had won, the face of the land that lay behind him was utterly changed and showed no sign of British or Roman life. From that time on, both the conqueror and the conquered knew themselves as Englishmen, and as yet we find in their history and laws no trace of the existence of a single Briton among them.

But, in the local features of conquered Britain, the names of "hill, river, vale, etc.," often remain purely Celtic. But, when we search for the traces of human life itself; for the names of the hamlets and villages that lay scattered over the countryside, we find them purely English. The "city" and the "vill" have vanished. Instead, appear the "ham" and the "tun", thus, the Roman and the Welshman were obliterated by name, leaving nothnig but an English-speaking tongue.

Don't think of the Anglo and Saxon races as having mastered the entire British Islands, prior to this time, but that portion only which lay within the boundaries of the prior Roman dominion. Both races stopped abruptly at the Clyde, the Firth and the Fourth rivers, penetrating but slowly into the Western and Northern districts. The mountains and forests escaped the army invaders and, to this day, the English have yet to conquer the institutions and the spirit of the Celts which still remain in the forests and mountains of Ireland, Scotland and Wales.

Slavery may be said to have originated during the Anglo-Saxon period. In fact, at that time, two great classes predominated, viz: the free and the unfree. The free were subdivided into the simple free who were called "ceorl" (In modern English, "churl"), and the noble free called "eorl" (In modern English, "cheorl"). Every free man was a citizen and soldier with voice in the assembly and a right to own property. The unfree or slave was called a "thrall." This included the free men who were convicted of a crime, and the captives who were taken in time of war.

Slave cabins clustered around every rich landowner's homestead. He could sell a slave whenever desirous. The slave had no place in court and no means in which to claim his rights. Thus, if he were killed, his master claimed the damages. The unfortunate slave had nothing to do with public affairs of the community in which he lived, and had no voice in its moot court. In other words, he was considered a hopeless victim of circumstances. Colored slaves were brought by immigration to America, but fortunately gained their freedom by efforts of the many thousands who sacrificed life and loved ones during the Civil War in our own land. The churl, the cheorl and

Digitized by Google

the thrall, as just mentioned, were the three distinct classes found among Teutonic society of Europe and later found among our forefathers of England.

With the victory of Doerham, the conquest of Brittania was completed. And she had in the main become England proper, the only purely German nation which rose upon the wreck of Rome. Hence, we find Hengest and his son Aesc raised to the kingdom in Kent; Aelle in Sussex; and Cerdic and Cynric in the West Saxon dominion, each successive king being the free choice of his people. Justice was that of the village, town-moot and folk-moot. The king could make peace, declare war, assign lands and name public officers by consent of the wise men only.

From the new English king arose the new order of English nobles. From the new order of English nobles arose the king's thegn, his body guards to whom the king gave horsse, arms and a seat in his meed hall for which, in turn and in allegiance, the thegn comrad was bound to follow and fight for his lord. The king's thegns, the new order of comrades, were exempt from the general jurisdiction of the hundred court or shire court, it being a part of the thegn's meed that he should be judged only by the lord whom he served. Grants of land to the king's thegns, a portion of his meed, made him a local nobility, bound to his king by the personal tie of allegiance only and not subject to actual service in the king's household.

From this new order of comrades, the king's thegns, thegnhood contained within itself the germ and development of feudalism. In the different English kingdoms of the Angles and Saxons, the greater kingdoms began to absorb the lesser. Through this struggle, the Anglo-Saxon English kingdoms made their first step towards a union of the Anglo and Saxon races.

CHRISTIANITY INTRODUCED IN ENGLAND BY ST. AUGUSTINE.

597 A. D., English worship lay principally in sacrifice which the house father offered to his gods. Each freeman was his own house-priest. The missionaries under St. Augustine landed on the historic Isle of Thanet and introduced Christianity which caused conversion of the Roman Empire, but hadn't as yet penetrated all of the English dominion.

The English king promised protection to the strange countryman and his religious faith, but personally he remained true to his false gods. Nevertheless, the little band of Monks, headed by St. Augustine who was sent on the English mission by Pope Gregory, caused a Latin influence which become a starting point for a revival of the language and Roman law. In fact, the English Common Law customary Codes began to be put into writing soon after their arrival.

Latin was the language by which the English kings made grants to the Thanes and their churches. First, Latin and English were the two languages used for executing writs and charters of the law. A writ is any instrument issued by governmental or judicial authority for the purpose of compelling obedience. A charter, briefly speaking, is any grant made by sovereign authority to the people or to a portion of them. Latin gained control over the English tongue and remained so until about 1730, nothing else being used in the judgments issued by king's courts and by the king's Chancery Courts until, when during the reign of George II who was crowned king June 11, 1727, a statute was passed which substituted the English language in place of Latin as language of the law.

Again speaking about St. Augustine's mission in Thanet, King Aethelbert finally discontinued his worship of idols and yielded to the preaching of St. Augustine and the Monks. King Aethelbert's son continued the conquest, but fell in an attack made upon the English king Edwin of Northumbria. King Edwin ruled supreme, and so specific was his government that Northumbria from that time became the principal power.

600 A. D., Aethelbert, king of the Kents, after having received the Christian faith, caused the common laws of his people to be set down in writing, the first step taken to codify the unwritten laws of England in imitation of Roman Civil Law. These laws of King Aethelbert consisted of ninety or more sentences of the general rules called to memory by counsel of his wise men and

Digitized by Google

which became the basis of the Kentish Code Law. In the seventh century, by the counsel of wise men, subsequent kings added about fifty new "dooms" to the ninety original rules of King Aethelbert. For an example of a doom or a general rule: If struck on the nose by the offender, three shillings damages were imposed. If an eye be put out, fifty shillings damages.

Before the eighth century, the West Saxons received Christianity and reduced their unwritten common law into writing, historically known as the laws of Ina. In fact, King Aethelbert's Kentish Code of law was the first step taken in the foundation of English statute law, reduced from the old common law customs, maxims and judicial decisions.

ALLODIAL TENURE.

"First Period of the Middle Ages."

The Middle Ages represent the allodial tenure period, or first period of the Middle Ages which dates from the dissolution of the Roman Empire about 395 A. D. to the crowning of Charlemagne about the year 800, the darkest and dreariest time in the history of Europe. And a second period of the Middle Ages which dated from the year 800 to about 1500 A. D. and mothered the feudal tenure system during that time.

Allodial tenure was a specie of property holding by which the owner did not hold his right, title and interest under a military officer, a lord or a king as was the case later recorded by the "feudal system" of which "allodial tenure" was its outcome. An allodial tenant knew no superior but God. In fact, it represents birth of the tenure system by which real property is holden in nearly every State of the United States today.

During the first period of the Dark Ages, industry and civilization were totally eclipsed. All records of Ancient history perished. Citise were burned to the ground. Ecclesiasts hid themselves in places of refuge. The allodial tenant held his land subject to dispossession by robbers or by his more powerful neighbors. Terrorized and without protection, tillers of the soil were obliged to place their lands into the hands of a more powerful agent under promise of his protection. Thus, the allodial tenant or land-holder resigned his privilege of freedom and became a "serf" of the soil instead, held in bondage though protected from the ravages and outrages.

FEUDAL TENURE.

"Second Period of the Middle Ages."

Thus came about, as explained in the developments of the first period of the Middle Ages, the change of ownership in real property from allodium (allodial tenure) to feudalism (feudal tenure) of the second period, 800 to 1500. It is true that feudalism arose upon the wreck of private property, but a matter of historical opinions as to whether it was caused by oppression of the allodial tenants in England or by war tactics of the Roman chieftains exercised in Rome.

Thus, it is claimed that the feudal system originated in the Roman Empire, being attributed to the tactics of the Northern Gothic conquerors thereof who exercised this method as the most effective means in which to have secured the conquest by alloting portions of the lands to the chieftain's principal followers (lords) who in turn gave small parcels to the vassals (tillers of the soil) on condition of fealty and military services to be rendered to the lords and war chieftains.

Others claim that feudalism took its rise among the German tribes; that it grew rapidly in Gaul (France), having been brought there by the conquering Franks. That, by the time William the Conqueror gained possession of Northern Gaul (the Province of Normandy) and was ready for the conquest of England, feudalism dominated in nearly the entire European continent and that, at the same time, there grew a similar system in England. While leading authors write with an impression that William the Conqueror introduced the feudal system in the English Isles. Maybe so and maybe he only modified English feudalism as it already existed by his introduction of the European system.

Digitized by Google

Considering the different opinions, you may readily observe that English feudalism developed during the Middle Ages either from the miseries which followed the fall of the Roman Empire, or from the oppression of English allodial tenure from which it is claimed feudalism sprang. Undoubtedly, a combination of both were the apparent causes. Anyway, throughout Europe and England, by the presence of general ignorance and by the absence of a centralized power, barbarism and wars, caused by the reign of blood-thirsty nobles, kept the people oppressed for more than a century during the Middle Ages.

To say the least, feudal tenure lay in the surrender of land with a promise of protection either by the nobles of Europe or by the allodial tenants of England. It may have been a combination of both. Nevertheless, feudalism grew, protection being the salient element which developed a far more peaceable state of political and social surroundings, notwithstanding the fact that the system burdened the peasant (tiller of the soil) with heavy exacttoins on account of his having to give a portion of his land profits to his lord, furthermore being obliged to render services to him in time of war for the protection of his master's castle and family.

A sentiment of attachment for the soil gradually grew and the peasantry (farmers of English possessions) became earnest even under the growing power of the feudal masters. In consequence, it furnished a material upon which future civilization could and has worked and developed. All Europe and eventually all England was under the feudal system, each nation being divided among and owned by these barons, counts, dukes and earls who coined money by revenues received from the feudal tenants and vassals (slaves) who cultivated the soil. Earlier than the tenth century, France alone was divided into three-score independent sovereignties, later being subdivided into baronies and dukedoms of which the barons and dukes, rulers of the tenants and vassals, acknowledged the king of France only as their superior.

These barons, counts, dukes, earls and nobles (lords) lived in castles of a massive type according to his financial rank. They were blind to the world in everything but a greed for money. Finances measured the social standard, consequently society was extinguished and impossible for a poor man. Learning was an unknown occupation. Fishing and hunting, common to Indian sport, were the chief amusements. Lords of the castles were boisterous, ignorant and rough. History pictures the women as having been more virtuous, but uneducated.

Around each castle were the humble shacks which housed the vassal tenants (tillers of the soil), the great common people of the Dark and Middle Ages who were subject to perpetual insults without redress for the rank injustice exacted by unsympathetic illiterate masters whose oppression lowered the vassal as far beneath the lord as slavery is from liberty. But, strange to say, the privation in feudalism was far superior to the allodial tenure system and caused a gradual progress of society owing to a forced necessity which is the priceless spur.

Feudalism was intensely aristocratic in nature and barbarous in practice, though the system created a love for home and fostered a more patriotic spirit. It made law and order possible; population flourished; people were earnest and inclined to the religious advantages offered. The priests tyrannized over the soul and the master over the body. This barbarous influence created chivalry (tenure of land by Knight's service), a form of ownership under the feudal system which gradually developed a beautiful sentiment. Among the tillers of the soil, courtesy, courage, generosity, loyalty and truthfulness were recognized as leading virtues. Love of God and love of man were ordained and enjoyed as a duty. Devotion to the female sex was considered a moral obligation and not a legal necessity. Few divorces were recorded. Separation and desertion were considered a disgrace. Conditions in this respect have changed since then.

In the twelfth century, feudalism was practically destroyed as a system of government by the rule of King Henry II., who succeeded the throne in the year 1154, and who brought the church under control of the state, thus estab-

Digitized by Google

lished a strong centralization system, nevertheless feudal influence was not entirely discarded as a system until about the sixteenth century after events of the Middle Ages.

INVASION OF ENGLAND BY THE NORTHMEN.

In 794, the success of the Northmen who landed and plundered the monasteries (places of worship) of Jaro and Holy Island hastened a union of the kingdoms of England in self-defense. First, these Northmen settled on the coast of Ireland and on the coast of Gaul (France). Eventually, they closed in on England from either side, effecting victories in every quarter with an exception of defeat by the victorious West Saxons who later saved England under the leadership of Alfred, known in history as "Alfred the Great", who during his reign moulded into its present form the Anglo-Saxon Chronicle. Alfred's name remains familiar. His Anglo-Saxon Chronicles of the kings of Wessex and of the bishops of Winchester widened into history which marks the gift of a new power for the English people.

REIGN OF ALFRED THE GREAT.

In 871, Alfred the Great began his reign at the age of twenty-three. A legislator whose work has come down about 200 years later than the written laws of Ina, Codified from the unwritten laws by King Aethelbert whose "dooms" are still in force among the Kents. King Alfred, the greatest and most powerful ruler of Anglo-Saxon time, in his struggle with the Danes, owing to the moral and intellectual degradation brought about by long wars which preceded his reign and which had demoralized the church and learning, established for him military fame and won for him the distinction of "Alfred the Great" by his having revolutionized both Christianity and civilization.

In 897, the army of the Northmen was completely overthrown. They withdrew across the channel after a fierce siege and slaughter by which, under Alfred the Great and his sons, England wrested from the Northmen pirates the land they had previously won. By the treaty of Wedmore, he dominated England south of the Thames. The Danes retained the balance until later the Saxons and Danes comingled and gradually became one people. After having put his kingdom into a state of defense by having fortified cities and maintained a strong navy, Alfred turned his attention to a legislation which bore a close resemblance to the laws handed to the Hebrews by Moses, which were laws penetrated by Christian ideas.

King Alfred selected from the Mosaic Codes and from the laws of Aethelbert, Ina and from other Saxon princes the rules and regulations best adopted to the people's needs. His greatest service was that of having separated the judicial from the executive function. The eorls and ealdormen had heretofore been committed to administer justice. He instituted trial by jury and insisted on the juryman's rights which were often abused by judges who decided cases against them. Frequently he hung judges for having punished criminals against a verdict of the jury.

Alfred attached great sanctity to oaths. To violate a sacred pledge was a felonious offense punishable by imprisonment only. Treason against the sovereignty was the gravest offense. To work on Sunday was a misdemeanor. Love of justice was his main trait of character. In a single instance, he hung two dozen inferior officers for unbearable injustice imposed upon the public. Conditions have change some since Alfred's reign over 1000 years ago.

Alfred the Great set aside the ignorant ealdormen and passionate warrior-judges whom he discovered could scarcely read the written laws and who knew but little about the common law usages which had been in use from time immemorial, and appointed learned judges who could interpret and enforce law when sent through the shires to maintain justice and to report the decisions of County Courts. These County officials were called Judges of Assizes, who dispense justice in the Assizes (single courts) to this day, known in America as the Circuit Judges. An Assize Judge travels from place to place throughout an English Circuit, presiding over jury trials. At this time in English jurisprudence, the sheriff of today was called "shire-reeve," a substitute for the old office of Vice Domini.

Digitized by Google

In the Assize (circuit court), a tithing represented ten neighboring families who were mutually held responsible for the conduct of all. Each man was obliged to keep a household roll of his servants. He was taught the law and knew his duties. A tithing was wholly responsible for the delivery of its criminals. A fine was exacted if one escaped. Also held responsible for any stranger who might be inside boundaries of the tithing. Ten tithings of ten neighborhood families each represented a hundred. Alfred established for each hundred its court from which appeals were made to a higher court. A higher court represented about three lower courts to each county, known then as a parish. A certain number of parishes (counties) were called a shire.

King Alfred appointed the ealdorman (an earl) who was chief judge of the County Court and Governor of the shire. The chief judge was assisted by a supreme judge, appointed by the king, who would travel from shire to shire reporting the decisions while assisting also in administering justice. This system brought about confidence in law and order whereby security succeeded distrust and lawlessness, making life and property safe for an Anglo-Saxon by a loyal union of fellow citizens, in place of by the State.

Eventually, Alfred found it expedient to compile a "Doome-Book" for general use in the whole kingdom. In substance, it contained the principal maxims of common law, meaning the immemorial customs and usages handed down from generation to generation which measured the penalties exacted for misdemeanors, including the forms of judicial proceedings. From corrupt practices of the established Danes who followed Alfred's reign, his code fell into disuse to a certain extent after having been debased by other customs, causing the extinction of Anglo-Saxon jurisdiction a century later. During the reign of Alfred the Great, the Mercian Laws (British customs), the Laws of West Saxon and the Danish Laws prevailed in three distinct parts of England.

King Alfred's main endeavor was to be father of his country and humble to its people. He set aside one-eighth of his income to benefit the poor, one-sixth for architectural purposes, one-quarter for religious purposes and a considerable sum for alien and foreign subjects whom he liberally patronized. How much does an official of the United States generally set aside for any use other than for his own personal use? Besides maintaining a college for young nobles of his court, Alfred the Great, who was a most generous and free-handed ruler, contributed freely to other schools and likewise to places of religious worship. As a scholar and a gentleman, he was thoroughly instructed in all branches of learning. A devoted Christian and a poet who indulged in philosophy lore; knew Latin; wrote Saxon; in fact, the Anglo-Saxon Chronicle was his greatest literary masterpiece and was authority during his reign. His sense of duty gave him accomplishment and character a radiant light for posterity. Outside of Charlemagne, he was distinguished the greatest prince in all Europe until the Norman conquest. Alfred died in 901 at the age of fifty-two, which was the close of his reign.

REIGN OF KING EDWARD.

In 901, Edward succeeded Alfred to the throne. In 910, the Northmen again arose against England. In 924, they accepted defeat. In 925, Edward died and his son Ethelstan succeeded him. King Ethelstan was succeeded by his son Edmond. During his reign, the Northmen arose for the third time and were again conquered. King Edmund died and was succeeded by his brother Edred. Again the Northmen arose in rebellion and the fourth time they were forced to submission. This ended the attempted conquests by the Northmen.

REIGN OF KING EDGAR.

Alfred's achievements and victories, during his reign from 871 to 901 A. D., only hastened an appearance of unionism between the three English kingdoms. Unionism took place about the year 955 under King Edgar. The West Saxons became mere leaders of all England, thus the Anglo-Saxons, Northumbrians and Mercians who represented the three distinct English kingdoms knew themselves as a homogeneous people. In other words, a people of the same kind under the same rule notwithstanding the fact that debauchery by kings and nobles kept England in terror and ignorance for over a century thereafter.

Digitized by Google

DANISH INVASION UNDER SWEGEN.

During the Danish invasion by the Danes who crossed the English Channel, the English king took a step which brought England into contact with Normandy, known then as the northern portion of that which is now France where the Northmen had settled after their submission in the four English battles 100 years before. In 1002, to win the influence of the Normans, England's king married Emma, a daughter of the Norman Duke. Soon after, the Danes under King Swegen invaded the southern portion of England. In 1907, they retired under a bribe, but returned in 1013 and completely conquered England after a few furiously fought battles. In 1014, Danish King Swegen died, which left the throne to his son Cnut.

CONQUEST OF ENGLAND BY CNUT.

In 1016, King Cnut gathered a strong fleet and was master of England after having overthrown the kingdom. He brought from Northern France (then Normandy) no new system of tenure, but used King Edgar's laws for his rule of government. Cnut's code was a comprehensive repetition of prior English law, excepting a few added improvements, all written in the English language of which they represented the jurisdiction of our forefathers for nearly five hundred years thereafter, and they could all be printed into a very small volume.

REIGNS OF KINGS HAROLD AND HARTHACNUT.

In 1035, King Cnut died and Harold succeeded him. In a short time, Harthacnut came to the throne. King Cnut's successors were unwise in government tactics and the English Empire eventually went to pieces. In 1042, Edward the Confessor came to the throne and gained a fictitious name of being a great legislator for it is claimed that he was nothing more than a mere usurper of accomplishments attained by his predecessors. He never made a law, and results show that he made poor use of the ones already made, otherwise there might have been no Norman conquest. Thirty years more brought to a close the first great period of English history, that of the Anglo-Saxons, about 1066, in which the political structure of law and society was undergoing a radical change.

REIGN OF KING EDWARD THE CONFESSOR.

In 1042, at the death of Harthacnut, Edward the Confessor was called to the throne, the last king of the old English stock and to whom was given the name "Confessor." At the beginning of his reign, three powerful Earls dominated Great Britain, viz: Godwine of Wessex, Leopic of Mercia and Siward of Northumbria. From their three distinct systems of law, King Edward compiled one uniform digest to be observed throughout the dominion as English jurisprudence. This digest was nothing more than a repetition of the law which developed from the union of the English kingdom under Edgar, Edward's grandfather, about 955 A. D. And the digest of both were but a renewed and somewhat revised promulgation of the Doome-Book of Alfred the Great compiled during his reign from 871 to 901.

As a matter of history, the first step taken to codify the unwritten law must be credited to the accomplishments of King Aethelbert who compiled ninety general common law customs which became the basis of the Kentish code system about the year 600 A. D. Aethelbert's laws were followed by the two codes of Eadric and Withroed of Kent. Then came the code of Ina of Wessex, and the digests of Alfred the Great which were influential throughout the English kingdom. Following these were the codes of Kings Aethelred, Aethelstan, Edgar, Edward, Edmund and the ecclesiastical and secular codes of Cnut the Dane. A majority of these codes were repetitions with improvements on preceding digests, experience of which more than four hundred years would naturally suggest.

These codes compiled a collection of immemorial customs, maxims, definitions, judicial decisions and rules of procedure in common law use of higher antiquity than memory can reach. It was the unwritten law set down in writing which subsequent rulers so frequently promised to maintain when

Digitized by Google

pressed by international complications or domestic discontent; the laws which our ancestors endeavored to preserve during the Norman Conquest subsequent to the Anglo-Saxon period which is being discussed and concluded. In 1066, King Edward died.

REIGN OF WILLIAM I. "THE CONQUEROR."

King William I. reigned from 1066 to 1087. Another step in English history after the death of Edward the Confessor and we find that Harold, the last of the Anglo-Saxon monarchs, had been crowned king. He was overthrown by William the Conqueror, a Norman ruler of Gaul (France), who claimed that Edward had promised to heir him the throne, and that the Pope, who was opposed to the English disregard for ecclesiastical law, had sanctioned William's succession to further the invasion of England.

THE NORMAN CONQUEST.

The battlefield for William was open owing to the fact that Harold's fellow earls were jealous of his ascendency which fostered a rebellion against him, and which brought about a great struggle over the succession. In 1066, King William I. landed in England and fought the decisive and historic battle of Hastings. December 25th, 1066, he was crowned king of England in Westminster Abbey. Later, all the rebellious districts were laid waste and the helpless inhabitants were slaughtered or left to die on the field of battle. Meanwhile, William became engaged in war with his own countrymen, the Norman Gauls in Northern France. At the siege of Nautes, he was wounded and soon died. The Normans were constantly at war with neighboring Provinces. The onslaught on civilized and peace-loving nations gave them prestige in France. Likewise, Anglo-Saxon kings of England were placed to the mercy of the Normans. In consequence, King William fell prey to his own countrymen while king of England.

As a legislator, William the Conqueror pictured his laws mostly from repetition of the Codes instituted by Alfred the Great and his followers. His conquest had a tendency to foster commercial opportunities on the continent. This developed a period of marked prosperity for the merchants who created a position of financial importance, enabling them to purchase from over-lords charters for liberty and freedom from any further imposts in return of an annual tax. The immediate effect of the Norman Conquest upon the common people of England may be considered a step forward to substantial self-government. The Doomes-Day survey shows that only three per cent of the people were feudal lords, while those remaining of a 1,500,000 population were small landed proprietors, serfs and slaves, all of whom were vassals (servants) of the three per cent feudal lords just mentioned.

THE DOOMES-DAY SURVEY.

In 1080, seven years before the close of William's reign, after having acquired possession of England, he subdivided the lands for his most powerful barons in a manner which made it impossible for them to overpower his interests. A few years later, the Norman and English population united and became one people. Thus, before the framing of the Magna Charta in 1215, the two factions remained Englishmen. Under the feudal tenure system, from unfavorable conditions arising from time to time, it was deemed advisable to keep a record of land holdings. To meet this necessity, King William compiled his record consisting of two volumes called the Doomes-Day Book, containing a general survey of English lands. These volumes were commenced in 1080 and the survey was completed about six years later. The land of all the counties excepting Cumberland, Durham, Northumberland and Westmoreland were compiled therein.

This system was inaugurated to discover the amount of land each tenant held, to determine his rights therein, to fix his homage expected and to ascertain the amount and character of service to be rendered to his over-lord. The two volumes of the Doomes-Day Survey continued in use and became the tax register of the kings. Taxes were levied from this survey until the time of Henry VIII. in 1509. During Henry's reign, a more convenient and correct sur-

Digitized by Google

vey was taken which remained in use until a third Doomes-Day survey was made in 1872, which compiled a record of all lands in England and Wales.

THE "DOOME-BOOK" NOT THE "DOOMES-DAY BOOK."

Don't be confused by the "Doome-Book" and the "Doomes-Day Book." The "Doome-Book" contained the code laws compiled by Alfred the Great about 200 years before the "Doomes-Day Book" survey including two volumes which compiled a record of English lands in 1080. In connection with the "Doome-Book" of Alfred's Code laws and King William's "Doomes-Day Book" of surveys, documents were kept also for the registry of manors and townships in the rural communities. These documents represented four classes, viz: the Court Roll, the Bailiff's Financial Report, the Rental Book, and the Tenant Register.

REIGN OF WILLIAM II.

In 1087, Robert, the eldest son of William the Conqueror, succeeded him in Normandy. William, the second son of William the Conqueror, was crowned king of England. Exactions made upon the Norman barons were so grevious that they resented it under a leadership of Bishop Odo who revolted and declared for the succession of Robert as king of England, who was then Duke of Normandy. King William II. of England suppressed the revolt. He was killed in 1100, and Henry, the third son of William the Conqueror, was chosen king.

REIGN OF HENRY I.

King Henry's first accomplishment was that of carrying out the provisions of the Treaty of Wallaford. He owed his succession partly to the charter he published which promised relationship in the feudal system unprejudiced to neither the vassals (slaves) or the barons. King Henry I., the lion of justice, preserved the laws of Edward. His reign is a history of rapid advancement in good government and order. Disused local hundred and shire courts were revived. Improvements in local customs were recognized and recorded. He gradually developed the exchequer (treasury system). Prompt and stern jurtice began to make England a land of peace after the violence of Anglo-Saxon times. King Henry promised to put down all injustice of the past, and tried to promulgate the best laws maintained in prior history. He was rightfully termed "the Lion of Justice" by having laid the foundation upon which was built the enduring fabric of the Constitution of England. With loss and sorrow to people under his rule, he passed away in 1135. His reign began in 1100.

REIGN OF STEPHEN.

In 1135, Stephen was crowned king at Winchester and reigned nineteen years. He was a weak offering to the throne, allowing the nobles to build castles at the expense of vassals (slaves). Stephen alienated the affections of his people by having hired foreign armies. Sessions of the ordinary courts of the realm were suspended during the anarchy which existed. Church courts encroached upon the province of secular jurisdiction, giving rise to quarrels between Church and State. His reign is regarded as an intermission of justice supplemented by anarchy between the reign of Henry I. and Henry II., who were two great and powerful rulers, Henry II. being the most remarkable. In 1154, Stephen died and Henry II. was crowned king at the age of twenty-one under the provision of the Treaty of Wallaford which provided that Stephen should retain the crown during his life, of which he did, and that he should recognize Henry II., Mathilda's son, as his heir.

REIGN OF KING HENRY II.

In 1154, Henry II. was crowned king. His reign continued until 1189, thirty-five years. Upon coming to the throne, conditions were dangerously strong. Monks, the great farmers, were taking up lands to the extent of having encroached upon church-yards. Henry II. directed the foreign armies, hired by Stephen during his reign, to be sent home. His initial mission was to carry out the Treaty of Wallaford. Baron castles, built without royal authority, were destroyed. Courts of justice were re-established. His reign was everything but a peace offering. Even his own son Henry arose in the 1173 revolt against him.

Digitized by Google

TRIAL BY JURY.

King Henry recognized the exchequer and Curia Regis Courts which promulgated justice to the inferior shire courts in all important civil and criminal cases. In matters relating to the title of real property, twelve sworn men chosen by the Sheriff would decide the allegations in controversy on their own knowledge or by information acquired from others. In a disagreement, other men were chosen until twelve were found of one mind. Criminal cases were adjudged likewise. The jury was sworn and their return on the charge was called a vere dicta (verdict) without appeal, except to the ordeal an ancient mode of trial now abolished. From this method, our modern jury trial has been moulded.

THE CHURCH AND THE STATE.

During Henry's reign, the legal relationship of Church and State were determined also. The distinct Church court was inadequate to inflict punishment on criminals, consequently the king insisted that a person charged with murder should be brought into the Royal Court (a Court of State) for trial. His Chancellor held that the case belonged to the Church Court.

THE CONSTITUTION OF CLARENDON.

In 1164, from indifferences which arose between King Henry and his Chancellor, relating to the jurisdiction of the Church Court and the Court of State over the right to try criminal cases, an appeal was taken to the realm. In consequence, a great council was held at Clarendon of which the celebrated Constitution of Clarendon was created, and by which the jurisdiction of the various courts was determined by having promulgated twenty-six rules to be used for legal dispensation purposes. In interest of the Church Court, the king's Chancellor refused to sign the Constitution. From fear of this refusal, he fled to France. Later, he was murdered by four Knights while in the Cathedral. In 1174, the Constitution of Clarendon was annulled by the Pope and abandoned by Henry II.

PASSING EVENTS AT THE CLOSE OF HENRY'S REIGN.

The Pope excommunicated all churchmen who favored the king. In return, King Henry outlawed all rich relatives of the Bishop. England and Normandy rose against the king in 1173, but he crushed all revolt. In 1178 developed the appellate jurisdiction of the king's council, a germ of the Court of Chancery. In 1188, personal property came under a tax. At the close of Henry's reign, feudalism as a system of government was destroyed. The Church was brought under control of the State. On account of his sons Henry and Richard, by their having rebelled against him, the king died heartbroken. Henry II. was succeeded by Richard I. in 1189.

REIGN OF KING RICHARD I.

In 1189, Richard I. was crowned king. He spent most of his time abroad while engaged in the Crusades of the Holy Land. At home, his royal minister carried on the great work begun by Henry II. and his father. They enlarged the self-governing power of the local courts of hundreds and shires, and had a grand jury elected for the assizes. It was during his reign when the assessment of taxes was placed in the hands of juries of presentment who were elected by the freeholders. Municipal freedom was readily developing and most of the towns were granted charters which gave them courts of justice and rights to control local trade.

SPECULATION FORBIDDEN.

By municipal freedom, trade became the ruling interest. The merchant class became influential. These organizations, called "guilds," gained judicial immunity and political power from the king. Buying during a season of plenty to hold over until a time when goods were dear was forbidden. Conditions have changed in this respect since then. Many other mercantile restrictions were passed also. In 1193, the "Fair Act" abolished the guild organizations. In 1199, King Richard I. was shot.

Digitized by Google

REIGN OF KING JOHN.

In 1199, King John succeeded King Richard I. During John's reign, he lost Normandy, quarreled with the church, caused strife from the barons and finally was compelled to sign the Great Magna Charta, a provision equal to the Englishman then what the United States Constitution is to an American of today. King John devoted the first part of his reign in war with King Phillip of France, the second portion in a contest with Rome, and at last he quarreled with the barons. It was all ended by provisions of the Great Magna Charta granted in 1215.

THE GREAT MAGNA CHARTA.

King John made complete submission by having set his seal to the instrument of freedom, the Great Magna Charta, God's gift to England, on June the 15th, 1215. Thenceforth, maintenance of the Magna Charta was the watchword of English liberty. In substance, it was a royal grant of freedom procured from the king by his barons and bishops. It was principally executory and not legislative, as most of its provisions were legislated by former charters and executed by the Magna Charta. To summarize: it limited the king's power over his slaves; secured prior liberties to the Church; maintained interests of the merchants; rendered trial by jury more effective, and limited the king's power of taxation. In fact, confirmation of the Great Magna Charta became the cry and a constitutional foundation of liberty for the following five or six generations.

ORIGINATION OF ITS FUNDAMENTAL PRINCIPLES.

The fundamental parts of the Magna Charta were derived from the old Anglo-Saxon charters cumulated and handed down by King Henry I. and his successors. It continues to be regarded as first in importance among the sources and principles of English constitutional history and law. Many of its redeeming features appear in our Federal "Bill of Rights" and in the constitutions of the States of the United States. Note that a charter is granted by a sovereign (king's) authority while a constitution is established by a people who are supposed to be the sovereign power.

REIGN OF KING HENRY III.

In 1216, King John died and Henry III. succeeded him. His reign was teeming with misrule and discontent which eventually brought about the barons' war. Extravagance marked the king's personal career. Heavy burdens were placed upon the people. The Pope exacted large sums from the clergy. An appeal was made to the king for his influence to stop the Pope's greedy hand, but without avail. These selfish demands made by the king and Pope were met with refusals. The king's council became known as parliament. They endeavored to check royal exaction.

THE RULE OF LEICESTER.

In 1244, an attempt was made to have officials appointed who would be responsible to parliament only, feeling that it concerned the community to ascertain what sort of men should be chosen for the weal of the realm and welfare of the public. This plan took the government from the king's hands. During a battle which ensued, King Henry was taken prisoner, but released within a year. Leicester ruled during his absence in a manner which brought lasting honor upon his name.

THE FIRST ENGLISH PARLIAMENT.

In 1265, Leicester summoned two knights from every shire and two burgesses from every borough. Knights and burgesses had long met in County Courts, now they were allowed to sit with barons and bishops in the national council. This brought about the first English Parliament, although the deMontford Parliament as assembled during the domination of Simon de Montfort was really the first House of Commons and the first triumph of the shire as a unit of the old English system. Thus, union of the two classes, the burgesses (Normans) and the Knights (Anglo-Saxons), distinguished English Parliament development from that of any other country. This parliament

Digitized by Google

was necessitated by and the outgrowth of new forms of taxation created by the old feudal aid tax system a voluntary gift for taxable purposes which required the subject's consent. In the outset, this English Parliament (a representative assembly) was called upon to grant revenue tax. Finally, in consequence of past experience, there was formed a Model Parliament in the year 1295.

FOUR LEADING ENGLISH DOCUMENTS.

In 1272, at the close of the Magna Charta period during the reign of Henry III. the English laws consisted principally of the authority as outlined in but four documents, viz: the Forest Law Charter, the Magna Charta, the Statute of Malbridge, and the Statute of Merton. The Forest Law Charter's name explains its purpose. The Magna Charta has been explained. The Statute of Marlbridge, passed in an ancient castle in Marlborough, compelled the king to redress many of the grievances which the barons held against him. The Statute of Merton attempted to legislate for the legitimacy of illegitimate children by a subsequent marriage of the parents.

USES OF LATIN AND FRENCH LANGUAGES.

During the reign of King Henry III., the Anglo-Saxon Doomes were entirely forgotten, the Norman law books were considered inadequate and even the ordinances of Henry II. remained only a parcel of the Common Law on account of the rapid change in English Jurisprudence offered by the powerful legislation of a centralized system of government. During the Charter Period and for some time thereafter law cases were written in Latin and later written simultaneously with the French language.

THE MANORIAL REPORTS.

The Anglo-Saxon Doomes and the ordinances of Henry II. were followed during the reign of Henry III. by three distinct kinds of Manorial Reports of the particular estates which came into use, viz: A detailed report of the extent of each manor, similar to the Doomes-Day Survey; the Court Rolls Report of each manor, similar to the record kept in the king's court; and the Annual Profit and Loss Report rendered by the bailiff of the manor to the non-resident landlord. The first, a detailed report of the extent of each manor, was compiled from sworn testimony of its villagers. The second, the court rolls report of each manor, furnished information relative to all business transacted in the petty courts. And third, the annual profit and loss report digested the annual income received from the manor estates and the annual expenses incurred therefrom. This closes the reign of King Henry III. in the year 1272.

REIGN OF KING EDWARD I.

In 1272, Edward I. was crowned king and reigned until 1307. He stood foremost in strength of character, in constructive and judicial insight and in practical wisdom. King Edward regarded the old class distinction of tenure under feudal lords as obsolete, consequently he set to work for an elimination in this respect. He instituted a strict night watch under the "hue and cry" process which signifies the pursuit of a felon on the highway upon the complaint of a party injured by a tort or crime. "Hue" signifies the complaint of an injured party. "Cry" signifies the pursuit of the felon by the people of a community who have been notified by a verbal summons from the sheriff or by a public utterance. This was an important proceeding and origination of the term "Hue and Cry."

THE STATUTE OF MORTMAINE.

In 1279, an indispensible constitutional feature was developed by creation of the Statute of Mortmaine. A statute is the formal act of a legislature. "Mortmaine" is the unlawful alienation of an interest in land to any aggregate, ecclesiastical or sole corporation. Thus, the Statute of Mortmaine as created in 1279 prohibited the devise of lands and other corporeal hereditaments to corporations. This checked the acquisition and absorbtion of land by the churches which would come into possession of large holdings by having acquired it from persons who would devise his land interests to some ec-

Digitized by Google

clesiastical corporation. In consequence, the churches became owners of an immense amount of real property. They never disposed of it, so the church lands would remain forever inalienable, to the jeopardy of all England. Thus, the real property fell into "dead hands," the two words from which the word "Mortmaine" derived.

STATUTE DE DONIS.

In 1285, Statute De Donis, as explained in the first chapter of the Statute of Westminster Two, conditioned the gifts of grants of lands when alienated, and introduced perpetuities. In this, perpetuity means a limitation on alienation of an estate for a period not to exceed the life of a person, or lives of people in being and twenty-one years additional. The same provision has been incorporated in some of our real property laws of today.

THE STATUTE OF QUIA EMPTORES.

In 1290, the Statute of Quia Emptores (Statute of Westminister 3) annulled and prevented suinfudation, which means that an inferior lord was not allowed to grant his estates to an inferior tenant to be held by him in trust for the inferior lord. It provided also that a freeholder could sell his land, but that the grantee (purchaser) should hold of the lord paramount. The Latin phrase "Quia Emptores" designates the statute by its having been the first word therein. King Edward's statutes are not lengthy, but are far-reaching and permanent. Legislation of his reign became fundamental. The principles laid down by the Magna Charta became final.

ORIGINATION OF THE COURT OF CHANCERY.

In 1300, the Court of Chancery originated and dispensed justice with the law courts hand in hand and side by side for some time. Every year, during the reign of King Edward I., was filled with lawmaking, especially so when speaking of the dispensation of the law of property and law of civil procedure. The year 1307 brought to a close the reign of Edward I.

REIGN OF EDWARD II.

In 1307, Edward II. came to the throne. In 1310, the barons under Thomas of Lancaster presented to the king a solemn protest on the grounds that the people were burdened by heavy taxation on account of his lavishness and debauchery. As a result, a government commission appointed twenty-one lords to represent the king. A series of ordinances were drawn in 1311 which Edward II. was forced to confirm. He was refused a king's prerogative without consent of the barons. Unfortunately, he made it possible to ruin Lancaster in 1322. The ordinances passed in 1311 were repealed by Parliament. A rebellion followed, headed by the Queen, who absconded with Roger Mortimer, and headed by King Edward's son. In 1327, King Edward II. was forced to abandon the throne to young Edward III., who was proclaimed king by a full parliament which convened at Westminster. The overthrow of Edward II. by an appeal to Parliament was acknowledged in assembly, an authority superior to monarchy. From then on, Parliament was fully recognized as the dominant power. Thus, a tax could not be levied nor any law passed without consent of the assembled estate.

REIGN OF EDWARD III.

In 1327, at the commencement of the reign of Edward III., the 100-year war with France broke out, resulting in an English defeat. England's king surrendered his claim to the French crown and to all English possessions in the French Dominion. During Edward's reign, Parliament acquired exclusive right of taxation. The king's ministers were held responsible to the representatives of the people. The authority of Parliament was coextensive with that recognized by the House of Commons of today. During his reign, forty-eight Parliaments convened in the fifty years' period. Around fifty barons and as many churchmen, who represented the privileged order, sat in the House of Lords. The knights and burgesses who represented the people sat in the House of Commons. In 1343, the House of Parliament included both the House of

Digitized by Google

Commons and the House of Lords, a dual system of government similar to our American Congress which consists of the House of Representatives and the Senate.

THE STATUTE OF LABORERS.

In 1347, this royal proclamation was enacted by the British Parliament. The Statute of Laborers provided that all persons under sixty years old were obliged to accept farm labor, unless otherwise employed as specified in this statute, at wages customary in the year 1347. Lord of the Manor was to have first claim to labor of his serfs (slaves). Those who declined to labor were imprisoned in the common jail. Persons leaving service before expiration of their agreement were imprisoned. Only the old wages were paid, and any one seeking to receive a higher wage was taken into the Lord's Court. Lords of the Manors who would pay a higher wage were liable to treble damages. Artificers were liable to the same conditions, of which were enumerated the carpenters, saddlers, shoemakers, tanners, tailors, masons and all other artificers. Necessities of life were to be sold at fair prices. Alms were strictly forbidden to able-bodied laborers. Wages paid in excess of statutory provisions could be seized for the king's use. The enactment of this statute was due principally to the scarcity of labor during the 100-year war with France.

THE BLACK PLAGUE.

In 1348, during the 100-year war with France which resulted in an English defeat, the Black Plague visited all England and swept away half of her population. During our present war with Germany, influenza (a black plague) visited our population and swept away millions of its people. Wars, accompanied with Black Death, are incidents to calamities taking various forms during the present as in the past by way of devastated territory, high taxes, a high cost of living, a loss of population, misery, poverty, slavery, depletion of a moral standard and all else seemingly inclined to degenerate the age, causing repetition of a historic past.

REIGN OF KING JOHN.

In 1377, at the close of Edward's reign, John of Gaunt was crowned king. in 1381, the English people revolted against him and the government came into the hands of the Duke of Gloucester (King John's uncle) who, under a merciless Parliament, impeached the ministers of King Edward II. and condemned them to death. In 1389, King John of Gaunt was succeeded by Richard II.

REIGN OF RICHARD II.

In 1389, Richard II. reached the age of majority and took possession of the English Government. He reigned in accordance with constitutional forms which struck a lasting blow on the Lord's Appellant whereby they were seized and thrown into prison. Taxes were levied with regard to right. King Richard II. was tried in Parliament and declared useless on the grounds that his deposition was based on transgression and debauchery towards constitutional rights of the people. He was forced to resign. King Henry, Duke of Hereford and son of King John of Gaunt, laid claim to the throne. Richard's reign lasted until 1399.

REIGN OF HENRY IV.

In 1399, Henry IV. succeeded Richard II. At the beginning of his reign, all achievements of the fourteenth century had been rendered void. Political, religious and social relations had been demoralized. Decay and retrogression characterized every feature of national life. King Henry pledged himself to respect constitutional rights of the nation. He attained his purpose by support of the Lord Appellant. He confirmed the ancient laws and promised to govern by advice of the estates assembled in Parliament. His reign became a troubled one by reason of heavy debts and schemes imposed by Richard's adherents, by some of the powerful barons and by the revolt of Wales. Burdened by these perplexities, in 1413, King Henry died after a reign of fourteen years filled with complications and dissatisfaction. Much had been planned, but

Digitized by Google

nothing developed of importance other than results accomplished from the revolt of Wales in 1400, and from the Statute of the Burning of the Heretics in 1401.

REIGN OF HENRY V.

In 1413, Henry V. ascended the throne. He renewed the French wars. In the Treaty of Troyes, 1420, it was enacted that King Henry V. of England should succeed the French throne after the death of Charles VI. of France. However, King Henry died a few months prior to the death of King Charles.

REIGN OF HENRY VI.

In 1422, after the death of King Henry V., Henry VI. was crowned king of England at the age of seven. He became a helpless imbecile. People suffered under the burden of taxes imposed on account of the French war. Parliament was unwilling to offer a peace treaty. In 1450, Normandy was lost to the English. In 1459, Civil War of the Roses broke out. In consequence, Edward IV was proclaimed king by the citizens of London, but Parliament refused to accept the succession, which restored Henry VI. to the throne, although he remained but a few months and was dethroned in 1471.

REIGN OF EDWARD IV.

In 1471, Edward IV. reclaimed the throne. He lacked in every sense of responsibility to his people. His extortions and heavy fines were paramount. No reform legislation was attempted. In 1483, his thirteen year old son Edward became king upon his father Edward's death.

REIGN OF EDWARD V.

In 1483, Edward V. succeeded his father Edward IV. to the throne. Scarcely had he been crowned king before his royal right was overthrown by the influence of Richard III., who assumed the crown. The boy king was murdered in consequence of King Richard's bloody march.

REIGN OF RICHARD III.

In 1483, after the overthrow of young King Edward V., King Richard III. reigned for two years. Only one Parliament was called during his wicked rule. His time was occupied in an endeavor to defeat Henry VII., his rival claimant. As a favorable result, Richard was slain in the battle of Bosworth Field and Henry VII. was proclaimed king.

REIGN OF HENRY VII.

In 1485, Henry VII. became king and ruled until Henry VIII. took the throne in 1509, seventeen years after the discovery of America by Christopher Columbus in 1492. King Henry VII. set to work and formed a new tribunal known as the Court of Star Chamber, inaugurated to remedy the inadequacy of the ordinary courts to deal with offenders, and further to make himself independent of Parliament. Henry encouraged commerce and trades, and strove to maintain his purpose by diplomacy and by marriages. Personal rule of the king replaced the old limited monarchy. He effected the great Commercial Treaty with The Netherlands in 1496. Resulting from his reign, King Henry VII. left to his son and heir a secure throne and a prosperous people. Thus it may be said that King Henry did more than to have created five peerages during his reign. By discovery of America in 1492, the birth of a new nation opened another field of history to be pictured by future events.

Digitized by Google

ENGLISH-AMERICAN HISTORY

The beginning of this period established prominence between English history up to this date and English-American history as pictured in the future. From the discovery of America by Columbus in 1492, to the framing of the Declaration of Independence by our forefathers in 1776, the two continents experienced radical changes while working simultaneously in the development of a new continent from the fabrics of a historic past.

THE NORTHMEN.

About the year 1000, when the Anglo-Saxons, Northumberians and Mercian classes knew themselves as a homogeneous people after having been unionized under the achievemnts of King Edgar's regnal service, it is claimed that the Northmen visited America, although this is but a passing event.

DISCOVERY OF AMERICA BY COLUMBUS.

In 1492, durign the reign of King Henry VII. in England, Columbus discovered America. He found the new land occupied miscellaneously by an uncivilized people who, living by fishing and hunting, were not considered to have held an indefeasible title. That is, they did not have a title that could not be defeated. October the twelfth, in that historic and momentous event, Christopher Columbus landed and planted the Spanish flag, the emblem of his native country. The one thing worth while had been accomplished. His most wonderful discovery thrilled all Europe. Explorers of leading foreign nations flocked to the newly discovered remote dominion, North America, to plant their flags and lay claim to the territory. England, France, Holland, Portugal and Spain each claimed explored portions of the American continent, thence proceeding to evidence their rights by having established settlements of which each will be mentioned at the proper time.

A TRANSFORMATION.

Nothing in the long line of history and political developments compares with the unfolding of the Western World, a trackless continent inhabited only by savages; opened, settled, civilized and Christianized; populated and nationalized in course of a few centuries. Time and volumes are insufficient to recount in detail the many features of the transformation of foreign and mixed nationalities into a homogeneous people of a new nation who have developed an extensive code of laws with well defined and high ideas of government and natural justice.

JOHN CABOT ON THE AMERICAN COAST.

In 1497, during the reign of King Henry VII. in England, John Cabot first saw the coast of either Labrador or Nova Scotia, now Canadian possessions. The following year he made another exploration of the American coast which brought him southward into the vicinity of Albemarle Sound, located on the shore of North Carolina. This was an English discovery, but from the fact that Henry VII. was a Catholic, under the Pope's influence America was given to Spain. King Henry reigned until the year 1509.

REIGN OF HENRY VIII.

In 1509, Henry VIII. was crowned king of England. At this time, England began to make herself felt on the American Continent. Thomas Wolsey, one of the greatest men in all history, held supreme power of Church and State. He was both Cardinal and Chancellor. It was his chief purpose to make King Henry absolute, and make his State supreme in Europe. To this end, peace was his policy and diplomacy his weapon. Wolsey's plans were encroached upon by developments of the great Church reformation which eventually changed the face of English history. For the sake of a male heir to succeed him, Henry VIII. sacrificed his wife in the event of a divorce. The first attempt was unsuccessful and he blamed the outcome on Wolsey whose overthrow quickly followed. Wolsey was succeeded by Thomas Cromwell.

Digitized by Google

DESPOTISM IN ENGLAND.

During the next few years, constitutional influence was swept away and England became a despotism (a monarch) of the worst kind. King Henry secured a divorce from his wife Catharine in a second attempt under the debauchery of Thomas Cromwell's rule of the Papacy (Pope's power). Wolsey had striven to rule; Henry VIII. and Cromwell had striven to ruin.

SPANISH DISCOVERY OF AMERICA BY PONCE DE LEON.

In 1513, Ponce De Leon landed a few miles north of the present town of St. Augustine, Florida. He became the first Governor of the new possession. Before the death of Columbus, Spain claimed possession of Cuba, Porto Rico and St. Domingo.

FRENCH DISCOVERY IN AMERICA.

In 1524, a French navigator, under directions from Francis I., landed near the present site of Wilmington, North Carolina. He explored the coast to Newport, New Jersey, thence northward to Newfoundland located off the East coast of Canada. The new coast territory was named "New France."

LONG PARLIAMENT OF THE REFORMATION IN ENGLAND.

In 1529, the Long Parliament of the Reformation convened in England and sat for seven years. The English Church had accepted the cause of Catharine. In consequence, the Church was deprived of its privileges by King Henry VIII. He made them dependent on him and enacted a statute which forbade an appeal to Rome.

THE ACT OF SUPREMACY IN ENGLAND.

In 1534, the Act of Supremacy was passed by which King Henry VIII. became supreme head of the English Church. At his request, a church convention was called which drew ten articles wherein the doctrine showed an advance towards Lutheranism. Finally, Cromwell fell in the same manner as in the fall of Wolsey, which left all power of Church and State in the hands of King Henry VIII. He was a reformer only in the capacity suggested by his personal pecuniary interests.

THE FRENCH IN AMERICA.

In 1534, under name of the French king, Cartier entered the mouth of the St. Lawrence River, the Atlantic outlet of the Great Lakes. After having erected a cross, he claimed possession. In 1540, the French built a fort near the present site of Quebec, Ontario, Canada.

THE ENGLISH STATUTE OF USES.

In 1536, during the reign of Henry VIII., the Statute of Uses was passed for the purpose of restricting the uses and grants of real property. This Statute was created by Ecclesiastics who tried to evade the Statute of Mortmain which was passed in 1279 during the reign of King Edward I. The Statute of Mortmain prohibited the devise of land to ecclesiastical corporations who refused to alienate it. Thus, the churches became possessed of large holdings which remained forever inalienable. The Statute of Uses dispensed with the old common law custom of Livery of Seisin and created trust conditions. In fact, it failed to accomplish the proposed purpose and eventually became ineffective on account of the indifferences maintained by interpretation in the equity courts and law courts in respect to its intentions and rights.

SPANISH EXPLORATION IN AMERICA.

In 1539, Ferdinand De Soto, a Spanish explorer, sailed from Cuba and discovered the harbor of Pensacola, Florida. He marched as far north as the present site of Savannah, Georgia, and later in Alabama and Arkansas, thence to the junction of the Mississippi and Red Rivers, where he died en route and was lowered from his boat to a watery grave.

Digitized by Google

REIGN OF EDWARD VI.

In 1547, Edward VI. succeeded King Henry VIII. During his reign Protestantism grew rapidly. In the Church, English language took the place of Latin. Mass was replaced by communion. A common prayer book was substituted for the Breviary and Latin Missal. Political policies and religious contention caused war with France and Scotland which lasted during the years 1547 and 1548. As a financial result, taxation was made unbearable. Conditions caused a general feeling of discontent.

REIGN OF QUEEN MARY.

In 1553, Queen Mary succeeded King Edward VI. During her reign, the Roman Catholic religion was partially restored. She married Philip of Spain for religious influence and to be allied with Spain. In this persecution, the English people and Parliament were dissatisfied. Thus, in 1558, England became involved in war with Spain which resulted in England's loss of her last French possession.

REIGN OF QUEEN ELIZABETH.

In 1558, Queen Mary was succeeded by Queen Elizabeth. She proposed to establish national unity of Church and State. England became once for all time on the side of Protestantism. In 1562, the Test Act was passed which included a long series of Penal Statutes against Catholic domination. In 1580, the Puritan Church was established. It contended for greater purity of worship.

A SPANISH INVASION IN AMERICA.

In 1565, Spain claimed the territory of Florida. She claimed the territory by right of discovery. A Spanish soldier was sent by King Phillip II. to conquer it from France. The result of her expedition was successful. In 1579, Sir Humphrey Gilbert visited our shores in furtherance of a plan to found an American settlement. In 1583, he made the second expedition. In 1585, a colony was formed on Roanoke Island by Sir Walter Raleigh. Queen Elizabeth gave it the name of Virginia. Another colony was planted later, but both died out.

DEFEAT OF THE SPANISH ARMADA.

In 1588, Spain set sail for the conquest of England. The enterprise ended in a failure with defeat to the Spanish Armada, representing one hundred and twenty war vessels which became unmanageable and were dashed to pieces in a terrible storm off the Northern coast of England.

SIR FRANCIS DRAKE EXPLORES THE PACIFIC COAST.

During the reign of Queen Elizabeth, Sir Francis Drake landed on the Isthmus of Panama. He sailed North on the Pacific Ocean to the Oregon coast, naming the possession New Albion. The reign of Queen Elizabeth of England was one of religious turmoil. Mary Stuart, the main figure of Catholic intrigue, was executed. Spain was subdued. And, as a whole, the English were united in support of the National Church. In 1603, Queen Elizabeth was succeeded by James I.

REIGN OF KNIG JAMES I.

In 1603, James Stuart, son of Mary Stuart the Queen of Scots, became king of England under the title of James I. England and Scotland were united by his succession, though each retained her own church, own Parliament and own laws. King James I. hated the English Protestants owing to their doctrine of equality in the Church which would eventually lead to equality in the State. Thus, the king ordered a new translation of the Bible. In 1611, it was published and remained the version used in nearly every English Protestant Church of today. Later, during the reign of Queen Anne, England and Scotland were legally united by act of Parliament.

Digitized by Google

ENGLAND'S LONDON AND PLYMOUTH COLONY IN AMERICA.

In 1606, King James I. granted the London and Plymouth Company a charter to a large tract of land in America; the London Company with its headquarters in London and the Plymouth Company with its headquarters in Bristol, Exeter and Plymouth, England. The American colonists were to be under the control of a council composed of residents of America, but appointed by the King of England. One-fifth of the precious metals produced in the American settlement were to be given to the English king. A duty was placed on foreign traffic also by England.

THE ENGLISH LONDON COMPANY IN AMERICA.

In 1607, the London Company sailed to America and planted a colony at the present site of Jamestown, Virginia. In 1609, a new charter was granted the Virginians by the London Company, allowing the council to be appointed by the stockholders instead of by the king of England. Lord Delaware was made Governor by the council. Many other colonists emigrated from England. In the new country, justice and law were in a crude state. Capital punishment was without a jury. Within nine years, population in and around the settlement numbered around 350 people. Virginians under the London Company were not satisfied. Thus, in 1619, they established a local assembly in which eleven districts were represented by two members of each district. From its first meeting on July 30th, 1619, the Assembly claimed the sole power to levy taxes.

HENRY HUDSON IN AMERICA.

In 1609, Henry Hudson, an Englishman, offered to sail under the authority of the Dutch East India Company and open a passage to India by a voyage to the North. Driven back by storm, he entered the mouth of the Hudson River. Hudson perished amid icebergs of the North Seas. He had sent to Holland a report of the country seen.

DUTCH CHARTER GRANTED.

In 1614, the Dutch, in a charter given to a company of merchants, named the Hudson River Valley "New Netherlands." This company made a treaty with the Indians, the first compact framed between the whites and savages.

LANDING OF THE PILGRIMS IN AMERICA.

In 1620, the Pilgrim Fathers who landed at Plymouth, Massachusetts, on November 21st, had no charter. In the cabin of the Mayflower, they drew a charter by which they agreed to make and submit to such laws as were needed for general good of the Colony. It was purely democracy, the laws all being made in mass meeting by the male inhabitants of the Colony until after the population reached a number which required a representative form of government.

DEMOCRACY VS. ARISTOCRACY.

In the Puritan settlement of Massachusetts, which was a single congregation of English worshipers, only church members were allowed to vote. Hooker maintained that all of the people should participate in a common government, while Governor Winthrop held that a large number of the people were unfit to take any part in the government. He based his claim on the grounds that a large percentage of the people were uninformed as to the political needs, consequently they could not vote intelligently. The political battle was a draw. It was the first recorded contest between Democracy and Aristocracy in America. In consequence, the Democrats withdrew westward into Connecticut and founded Hartford, Wethersfield and Winsor.

NEW ENGLAND SETTLEMENTS.

From 1621 to 1630, several scattered settlements were located along the New England coast. One near Cape Ann, which received a title to all the land between the Merrimac and the St. Charles Rivers, the nucleus of a colony to which King Charles I. granted a Royal Charter in 1630. Winthrop was chosen Governor of the Cape Ann settlement.

Digitized by Google

LORD BACON IMPEACHED.

In 1621, Lord Bacon was impeached for taking bribes in law suits tried before him as Judge. A verdict of guilty was returned and he was fined 40,000 pounds with imprisonment. As a friend of the English king, who interposed, the culprit escaped with but a few days' imprisonment.

THE LONDON AND PLYMOUTH CHARTER ANNULLED.

In 1624, King James I. of England annulled the London and Plymouth Company's charter and Virginia came directly under the crown as a Royal Province, although the House of Burgesses continued to hold the purse and to assert its power in local matters.

DEATH OF KING JAMES I.

In 1625, King James I. died of confirmed drunkenness and gluttony. This event and the accession of Charles I. were fortunate happenings to the Colonists as the new king paid no attention to conditions in America whereby the Colonists continued to enjoy liberty.

REIGN OF KING CHARLES I.

In 1625, Charles I. succeeded King James I. and predominated with the idea that the people had no rights which he was obliged to respect. He married a Catholic Princess whose religion was despised by the English people. In procuring money for her extravagant habits, King Charles I. was obliged to appeal to Parliament for funds, but was refused. In consequence, King Charles dissolved Parliament. Another body was called and it was likewise dissolved on account of having drawn articles of impeachment against one of the king's favorites.

THE PETITION OF RIGHTS.

Later, King Charles I. levied illegal taxes on the people who made an appeal to Parliament for relief. This body presented to Charles the Petition of Rights which in substance reaffimed the chief provisions of the Magna Charta of the year 1215. That no one would be compelled to make any gift, loan or pay a tax without common consent by act of Parliament was the main provision of the Petition of Rights which the king was finally compelled to sign in 1628. In place of illegal taxation, King Charles began to grant monopolies in exchange for money considerations. Evidently these practices are being fostered everywhere at the present writing. A degrading system of political tyranny prevailed in England.

THE BIRTH OF NEW YORK.

In 1626, the Director-General of New Netherlands bought the entire Island of Manhattan for the sum of $24. From this alienation dates the birth of New York State.

LORD BALTIMORE IN AMERICA.

In 1629, King Charles I. granted to Lord Baltimore of England the Territory of Maryland. He was made Lord Proprietary with full power upon rendering the king two Indian arrows yearly as homage. Upon rendering also a fifth of the precious metals discovered.

THE PURITANS IN AMERICA.

In 1630, a number of Puritans started the Massachusetts Bay Colony in the State of Massachusetts under a charter received from King Charles I. of England. After having arrived from the Old World, each settlement, led by a Minister, established a Church. Whenever they met for church purposes, it was called a parish meeting. Whenever they met for civil purposes to legislate for the construction of school houses, roads, etc., it was called a town meeting. Thus, communities were established as they still exist.

ROGER WILLIAMS IN AMERICA.

In 1631, Roger Williams, who was placed by his patron Coke into the English Charter House School, came to America and later attended the Pem-

Digitized by Google

broke College at Salem, Massachusetts. By having denied the Magistrates the right to enforce attendance on religious services, he was banished from the colony. Thence, he settled at the present site of Providence, Rhode Island, and established a pure democracy and a free religious belief. Later, Roger Williams returned to England and secured a patent from Parliament for a colony near Providence.

THE FIRST WRITTEN AMERICAN CONSTITUTION.

In 1639, the Democrats (Liberals) who withdrew from the Massachusetts Bay Colony, after the political contest between Hooker and Winthrop of Democracy vs. Aristocracy, met at Hartford, Connecticut, and agreed to govern themselves according to a written constitution which was confirmed later by a liberal charter issued in 1662. This English-American combination united them itno a Republic whereby the people themselves were the recognized authority without any mention or influence of either aristocracy or a king. In other words, purely democratic.

THE UNITED COLONIES OF NEW ENGLAND.

In 1643, the first American league was formed and called The United Colonies of New England. This included the Massachusetts, Connecticut, New Haven and Plymouth Colonies. Two members were chosen from each colony who held the power as a committee to manage, to call out troops, to settle disputes, etc., in self-defense. This confederation existed until 1664, when Sir Edmund Andros arrived from England to govern all New England in America as a Viceroy. Thus he ruled as the English king's substitute.

COLONIZATION OF THE NEW WORLD.

During colonization of the new world, three distinct forms of colonial government prevailed, viz: the Charter, the Proprietary, and the Provincial Colonial form of government, which are explained as follows: In the Charter Colonial form of government, under a written instrument, certain powers of self-government were invested in the people as was the case in Connecticut, Massachusetts and Rhode Island. In a Proprietary Colonial form of government, full power is vested in an individual (or viceroy) who renders homage to a king as was the case with William Penn in Pennsylvania and with Lord Baltimore in Maryland. A Provincial Colonel form of government is composed of a council appointed by the king. The council act as the upper house (the Senate), while an Assembly of Representatives chosen by the people act as the lower house with the king, who acts as executive head for both.

ENGLAND DECLARED A REPUBLIC.

In 1649, following the execution of King Charles I., the House of Commons passed an act which prohibited the reign of a king. The House of Lords was abolished and England was proclaimed a Republic. Oliver Cromwell, promoter of the Commonwealth and leader of all armies, was chosen head of the new government.

THE BAREBONES PARLIAMENT.

In 1653, the Barebones Parliament was summoned by Oliver Cromwell. It proposed several reforms which were adopted later under a constitution called the Instrument of Government by which the sovereignty was vested in Lord Protector Cromwell and a council appointed for life. Parliament was summoned every three years. A standing army of 30,000 soldiers was to be maintained. Taxes were levied by Parliament. The Roman Catholics were disfranchised forever.

THE HUMBLE PETITION AND ADVICE.

In 1657, the Humble Petition and Advice was drafted. This was the second constitution framed after England had been declared a Republic. During England's Commonwealth, many Royalists fled to America, among whom were the ancestors of Washington, Jefferson and other well known statesmen of American history.

Digitized by Google

DEATH OF LORD CROMWELL.

In 1658, Lord Cromwell died. He had shown moderation and good taste in the affairs of government. Cromwell was not oppressive. Instead, he favored any and all forms of religious worship not opposed to a uniform government. He tried hard to establish a Commonwealth which would respect the will of the English people whereby, in order to maintain peace, he was obliged to resort to absolute power. During the year of Cromwell's death his eldest son Richard succeeded him. After a brief reign of less than a year he was requested by military leaders to resign.

CESSATION OF ENGLAND AS A REPUBLIC.

In 1660, General Monk, Commander-in-Chief of Scotland, marched into England and later restored the Presbyterian members of Parliament who had been driven from their seats in 1649. Unfortunately, this defeated the possibility of England's having remained a Commonwealth. The accomplishments of Protector Oliver Cromwell to establish English freedom were overruled by a more powerful agent. Thus, in but eleven short years Republican rule came to an end. The germ of freedom and a Republic for England was transferred and transplanted in American soil by our forefathers who fought and bled for its growth and productiveness.

REIGN OF KING CHARLES II.

In 1660, Charles II., the son of King Charles I., succeeded him in the downfall of the English Republic. His reign became a government of debauch. First, Charles II. pardoned all who had fought against his father in the English Civil War, prior to the time of Oliver Cromwell who nursed the corrupt influence of King Richard I. into a republican form of government which was a political transformation. King Charles II. put to death ten members of the High Court who executed his father, Charles I., and nineteen were imprisoned for life.

THE CORPORATION ACT OF PARLIAMENT.

The Corporation Act of Parliament ordered all holders of municipal offices to renounce the Puritan Covenant, to maintain the Presbyterian faith and take the Sacrament of the Church of England. Other stringent Ecclesiastical Statutes were passed. To resist these inhuman laws meant severe punishment either by a fine or by imprisonment. In search for freedom, English people were continually leaving for the New World—America.

WILLIAM PENN IN AMERICA.

During the reign of King Charles II., William Penn was granted the Territory of Pennsylvania. Penn's power was not dominating like that of Lord Baltimore. The Pennsylvania laws were under supervision of the king's approval, while Lord Baltimore supervised the Maryland laws. Pennsylvania had authority to impose taxes, while Maryland did not.

OUTGROWTH IN AMERICA.

In 1661, Massachusetts began to be regarded as an independent State. The Massachusetts courts asserted the right to elect its officers and make its laws so long as concurrent with those of England. Later on, American laws concurrent to those of England were known only by jurisdiction of the past.

ENGLISH COMMISSIONERS IN AMERICA.

In 1664, English Commissioners arrived in Boston, Massachusetts, with authority from King Charles II. to investigate and report the administration of the Colonial Charters of America. The Massachusetts courts prevented any complaints from having appeared before the Commission, and offered further defense by force of arms against any infringement of its rights either from any acts of English Parliament or from any demands of the king if contrary to just colonial legislation. Thus, a general feeling of contention and strife arose between England and the New World which later gave birth to the Revolutionary War of America.

Digitized by Google

POLITICAL DEVELOPMENTS.

In 1665, during the reign of Charles II. of England, political developments gave the names "Whig and Tory" to two new factions which had much to do with early American politics.

ENGLISH HABEAS CORPUS ACT.

In 1679, originated the Habeas Corpus Act in England which provided for a writ or order addressed by the king to any officer or person who had detained another in custody, commanding him to come forthwith before the party detained and show cause why he is being restrained of his liberty. This act released the possibility of arbitrary confinement of a person without conviction of guilt sustained by the court, or without his having a chance for trial. The Habeas Corpus Act abolished the last remnant of the feudal tenure system with the exception of a few minor conditions in relation to the landlord and his tenant.

THE AMERICAN CHARTER VACATED.

In 1684, a charter granted to the Massachusetts Colony was vacated by King Charles II. of England whereby thet people ceased to be free. Later, during the reign of King James II. of England, who succeeded Charles II. in 1685, the population of all of the New England Colonies in America were reduced to a condition short of absolute slavery.

DEATH OF KING CHARLES II.

In 1685, King Charles II. died a Roman Catholic. The greater part of his reign was consumed by schemes and treaties which were disgraceful to himself and to his country.

REIGN OF KING JAMES II.

In 1685, James II. succeeded his brother, King Charles II. Likewise, his ambition was to rule without a Parliament. He aspired to restore the Roman Catholic religion in England. His reign was consumed in suppressing insurrection. Three years after he ascended the throne, Prince William of Orange landed in England with 14,000 troops to defend his wife's (Mary) claim to the English throne, and in protection of the English people. This was the fifth and last great landing of alien subjects in England. They occurred as follows: Landing of the Romans 55 years before Christ; landing of the Saxons 436 years after Christ; landing of St. Augustine, 597 A. D.; landing of William the Conqueror, 1066 A. D., and the landing of Prince William of Orange, 1688 A. D. Prince Williams' revolution was accomplished without the shedding of blood.

KING PHILLIPS' WAR IN AMERICA.

In 1688, during the King Phillip's War, six hundred of the American inhabitants were killed by the Indians, and hundreds of buildings were burned. In 1690, the French and Indians fell upon Schenectady, near the present city of Schenectady, New York. This event occasioned the first American Congress which assembled in New York City, the people having been represented by seven delegates from the various Colonies who planned a defense against the invaders.

REIGN OF WILLIAM AND MARY IN ENGLAND.

In 1689, Prince William of Orange and his wife Mary succeeded King James II., who had fled to France in pursuit of his wife and his son, James Edward. Parliament issued a statement under name of the Declaration of Rights which recited the illegal acts of King James II. and proclaimed him no longer the sovereign. With a few slight changes, the English Bill of Rights was signed by King William and became a law. The reign of King William and Mary was a prolonged battle for the maintenance of political liberty. William was unparalelled only by Cromwell in his efforts to free the English people. Regnal services of him and Mary ceased in 1702.

Digitized by Google

THE THREE CONSTITUTIONS OF ENGLISH LIBERTY.

In 1215, framing of the Magna Charta was the first step taken in English constitutional law. The second step represented the framing of the Petition of Rights in 1628. The third and last step taken occasioned the framing of the Bill of Rights in 1689. Thus, the written safeguards of English liberty may well be included in these three measures. Lastly, the Bill of Rights brought to an end the doctrine of the Divine right of English kings.

THE ENGLISH ACT OF SETTLEMENT.

In 1701, the Act of Settlement extended provisions of the Bill of Rights which established a new line of Protestant sovereignty whereby an English sovereign is as much a creature of an act of Parliament now as is the pettiest tax collector. His dependency on the will and wishes of the people for his office and power is equal to or greater than that of a President of the United States.

ENGLISH LEGISLATION IN AMERICA.

Gradually, the American people expressed an ardent desire for civil freedom. English Acts of Parliament were held to be valid in American Colonies. The Colonists claimed protection under the English Writ of Habeas Corpus; freedom from taxation without representation, and to all guarantees afforded by the Magna Charta provisions.

ENGLISH NAVIGATION ACTS.

The English Navigation Acts were a heavy grievance to the American Colonists. Under the navigation provisions, Colonists were obliged to sell their products to English consumers, and were obliged to obtain supplies required from abroad from England or be taxed if they were purchased elsewhere. This gave England a monopoly on American products.

REIGN OF QUEEN ANNE.

In 1702, King William and Mary were succeeded by Queen Anne, who reigned until 1714. She was the youngest sister of Queen Mary. Politically speaking, at this time England was divided into two parties: the Whigs and the Tories, but later succeeded by the Conservatives and Liberals. War broke out with France and lasted eighteen years. England's object was to keep possession of the American Continent which was threatened by French encroachment.

QUEEN ANNE'S WAR IN AMERICA.

In 1702, rights of the American Colonists were surrendered to the English Crown. In consequence, the Queen Anne's War broke out in America. Colonists made preparations for a vigorous campaign against the French and Indians. The Indians were defeated and they signed the Treaty of Peace in 1725 which was effective until King George's War in 1744. King George's War in America lasted until 1748.

THE TREATY OF UTRECHT.

In 1713, England, France and Spain signed the Treaty of Utrecht by which the king of France acknowledged the succession of Queen Anne in England and ceded all claims to Nova Scotia, New France and the Hudson Bay Company possessions in America over to England.

REIGN OF GEORGE I.

In 1714, Queen Anne died without leaving an heir to the throne. By the Act of Settlement, George I. came into possession of the English Crown. He reigned for thirteen years. His first movement impeached several Tory leaders for suspected intrigues. He appointed Sir Robert Walpole his Prime Minister, the Premier whose authority it was to act in capacity of the king in choosing a cabinet. When political policy of the cabinet ceases to agree with that of the House of Commons, the cabinet usually resigns and the king chooses a new Prime Minister from the opposite party. Premier Walpole remained as head of the English Government for about twenty-one years. At

Digitized by Google

any cost, he attempted to maintain the Whig party and openly bribed members of Parliament to accomplish his purposes.

SIR WILLIAM BLACKSTONE.

July 10th, 1723, dates birth of the most brilliant scholar and law interpreter that the world ever knew—Sir William Blackstone, the third son of an English silk manufacturer. In 1746, he entered the bar after having been educated at Oxford College. In 1750, Blackstone began to plan his series of lectures on the law of England. In 1753, at the age of thirty, the plan of his great work was completed when he began to exhaust his ability by having delivered his course of lectures in Oxford College. In 1758, he was chosen Vinerian Professor at Oxford. In 1765, his course of lectures as delivered at Oxford College were published and took the form of Blackstone's Commentaries, which will be skopen of more fully later.

REIGN OF GEORGE II.

In 1727, King George I. was succeeded by George II., who reigned until 1760. During his regnal services, England secured a footing in India. The English and French war took place in America by which George Washington first made himself known as a soldier and a hero.

THE FRENCH AND INDIAN WAR IN AMERICA.

In 1754, the French and Indian war broke out. Twenty-five delegates from the Northern Colonies met at Albany, New York, in June. Benjamin Franklin, who represented Pennsylvania, submitted his plan for a general government throughout English-America. In the French and Indian invasion, which was dominated by England's rule, they were victorious, resulting that the English endeavored to impose upon the American Colonies a large part of the burden of expenses incurred during the war. In consequence, a new sysetm of taxation was imposed.

BENJAMIN FRANKLIN'S ALBANY PLAN.

In 1754, as above mentioned, the first attempt to unite the Colonies was formulated by that far-seeing genius, Benjamin Franklin, exercised through delegates to a Congress held in Albany, New York. This union was formulated as the Albany Plan. The Colonies were jealous of each other, consequently the proposed union of forces and plans was never adopted.

REIGN OF GEORGE III.

In 1760, King George II. was succeeded by George III., who reigned until 1820. At the beginning of his services, the Whigs had possession of the English Government as they had for nearly half a century past. Their influence and power had reduced the king to a mere figure-head. King George III. was conscientious, but narrow and stubborn. He had determined upon making himself felt and did so by having appointed Lord Norton, the Prime Minister who bowed to his will.

THE ENGLISH NAVIGATION ACT.

In 1760, England attempted to enforce the Navigation Act more severely. English officers were empowered by orders and writs to enter any American colonial home at any time and search for smuggled goods. She continued to impose a burden of taxation on the American Colonists. The Colonies were regarded by her as a valuable source of revenue and a convenient place to unload surplus and undesirable subjects. The king's friends and the office-seeking element found America a good place to procure political jobs of personal pecuniary interest and make fortunes.

MISCARRIAGE OF JUSTICE.

As explained by the Navigation Act, America was obliged to confine her trade with England alone. The Colonists were compelled to employ none but English vessels. Imports were confined to purchases from English factories only. Goods, wares and merchandise were not allowed to be made in America, consequently the people were obliged to purchase these necessitis from Eng-

Digitized by Google

land's markets under a heavy tax. As early as 1664, during the reign of Knig Charles II. of England, American Colonists attempted to evade such laws. For punishment, the English king revoked the New England charters and placed the Colonies under absolute rule of the English Crown.

THE ENGLISH STAMP ACT.

In 1764, the grounds for dispute with the mother country had arisen by the American Colonists having asserted their right of "taation without English representation," in place of having provisions of the Stamp Act imposed by English Parliament which bound the Colonies by legislation. American plantations were systematically robbed for the benefit of England. Colonies were prohibited from manufacturing. A tariff was placed on corn to protect the British landlords and farmers. All legal documents, such as deeds, notes, wills, receipts, etc., were required by England to be written on paper bearing a high priced government stamp, so the Colonists refused to use the paper. Trade was limited to the mother country, and transportation could be carried on with English transports only. In 1765, the Stamp Act which was passed by English Parliament became effective. This legislative provision alone was not so oppressive, although the patriotic eloquence of Adams and Henry charged the measure and indignation followed. Colonial support of the English armies was resisted also.

THE AMERICAN COLONIAL CONGRESS.

In October of 1765, a Colonial Congress was called for the purpose of promoting the anti-stamp tax agitation. The members assembled in New York City and adopted the Declaration of Rights to repeal the Stamp Act. Nine Colonies were represented by twenty-eight delegates who declared their rights from taxation not imposed by their own representatives. This statement was forwarded to England as a joint protest against English taxation in America without her representation.

BLACKSTONE'S COMMENTARIES.

In 1765, Sir William Blackstone published his Commentaries on the English laws, the first comprehensive text-book on the laws of England as they existed at that time, and as he had traced their growth from the earliest beginning. His work of four volumes, covering the Rights of Persons, the Rights of Things, Private Wrongs and Public Wrongs, began to be read not only at home, but among the Colonists in America also. Eight editions appeared during the author's lifetime. He was a member of Parliament and appointed Judge of the Common Pleas in 1770. February 14th, 1780, at the age of fifty-seven, Sir William Blackstone died. His life as a devoted Christian, and his monumental work as an author and law interpreter is unexcelled.

A MASTERPIECE OF LEGAL KNOWLEDGE.

Blackstone's Commentaries, covering the Law of Rights and Wrongs, were written with so much accuracy, precision and system, and with language so elegant and pure that, ever since, his publication has maintained first place as an elementary work for any one who wishes to make English Common Law a study. In fact, it is in itself a legal education for people in every walk of life, and in all nations as it has been translated in many tongues for that reason and purpose. The simplicity with which it introduces the study of law, respecting the nature of laws in general; the countries subject to those laws; the foundation of English laws and their objects, is unexcelled.

GREATLY IN DEMAND.

Before the publication of Blackstone's Commentaries, each American Colony had administered the law by its own method. All Colonies considered the English Common Law to be in use on this side of the Atlantic. Few law books had been published, and but few attorneys had seen it convenient to attend schools, consequently there was a need and great demand for such a valuable work as Blackstone's four books which cover "rights" and "wrongs" in two subdivisions, and further divided as follows: Volume 1, the Rights of

Digitized by Google

Persons; Volume 2, the Rights of Things; Volume 3, Private Wrongs, and Volume 4, Public Wrongs. His Commentaries received a wonderful reception in America. A rapid sale took place between the day of publication and the cessation of commerce between England and the American Colonies.

THE ENGLISH STAMP ACT REPEALED.

In 1766, after repeal of the Stamp Act, an import duty was placed on tea. The Colonists pledged themselves not to import dutiable articles. Upon arrival of the English ships, the tea was unloaded in Boston Harbor. In 1772, all duties were canceled excepting a duty on tea. Consequently, in 1774, the Boston Harbor was closed by an act of English Parliament to enforce the burden of taxation upon the Americans. The Massachusetts Charter was annulled by English authority and a Military Governor was appointed by the English Crown. Prior to this, in 1770, during the Boston Massacre, British troops in Boston opened fire upon a crowd of Colonists, killing a number. Thence came the Billeting Act which required that the Colonists lodge and feed British troops whenever quartered among them. In 1770, a statement of grievance was issued by a committee at Boston, adding as new complaints that American Colonists should not be sent to England for trial, and that the plan to establish Bishops over Americans should be abolished.

THE FIRST CONTINENTAL CONGRESS.

In 1774, our first Continental Congress met in Philadelphia, Pennsylvania, September 5th, for the express purpose of drawing a Declaration of Rights which set forth their attitude toward and demands from England. This Congress included delegates elected from the several colonies on the advice of Massachusetts.

THE SECOND CONTINETNTAL CONGRESS.

In 1775, after King George III of England refused to adhere to nothing short of compulsion, and after the battles of Lexington, Bunker Hill and Concord in America, the second Continental Congress met in the month of May. John Hancock was chosen President. He took charge of the forces which beseiged the British in Boston. Washington was appointed Commander-in-Chief of the Continental Army as a whole. The delegates of the several colonies, as assembled in Congress, took charge of the common cause against England.

THE DECLARATION OF INDEPENDENCE.

In 1776, sentiment for independence still grew. June 7th, Richard Henry Lee presented a resolution in Congress which declared that the United Colonies are and ought to be free and independent States, and that political connections between them and England should be totally severed. In consequence, Adams, Franklin and Jefferson were appointed to prepare the Declaration of Independence which was adopted July 2, 1776, and was signed by the delegates July 4th, of the same year, whereby the colonies were expressed as independent States. As fundamental law, the Declaration of Independence will always have an important bearing upon our political and constitutional history. It may be regarded as the fundamental law of America whenever speaking of the relation between its sovereignty and our established government.

IN CONCLUSION.

If further interested, read the Laws of Hammurabi and Moses, Arnold's History of Rome, Cooper's Institutes of Justinian, Gibbon's History of the Decline and Fall of the Roman Empire, Hugo's History of the Roman Law, Pomeroy's Introduction to Municipal Law, Sander's Justinian, Blackstone's Commentaries, Barrington's Magna Charta, Bulwer's Last of the Saxon Kings, Johnson's "The Normans in Europe," Kent's Commentaries, Shakespeare's King John,Tennyson's Harold, Younge's "The Little Duke," Bracton's Works, Reeves' History of English Law, St. Alban's Chronicles, Thomas Wyke's Books, Balle's Important English Statutes, Thorpe's Ancient Law and Institutes of England, Tout's Edward I, Chancer's Canterburry Tales, Morris' Dream of John Ball, The Boy's Froissart, Rossetti's "The King's Tragedy," Seargent's John

Digitized by Google

Wycliffe, Scott's Fair Maid of Perth, Shakespeare's Henry IV, Henry V and Henry VI, Lord Litton's "The Last of the Barons," Oman's Warwick, Beesley's Elizabeth, Creighton's Wolsey, Holdworth's History of English Law, Pomeroy's Municipal Law, Ramsay's Reign of Henry III and Edward I, Shakespeare's Henry VIII, Ridge's Constitutional Law of England, Tennyson's Queen Mary, and leading authors on American History.

Digitized by Google

ROMAN CIVIL LAW

As mentioned by Blackstone, the Roman Civil Law was the system of jurisprudence held and administered in the Roman Empire, particularly as set forth in the compilation of Justinian and his successors. The Canon Law was a body of the Roman ecclesiastical law relating to such matters as that the church either had or claimed to have the proper jurisdiction. In the United States, Louisiana is the only state in which the unwritten or civil law prevails. A general distinction shown between the Roman Civil Law and the law of England is that the Roman Civil Law comprised the XII tables and the imperial constitutions which were, in 479 A. D., chronologically arranged into the Codes, the Digests, the Institutes and the "novels" compiled under the supervision of Justinian, while the common law of England comprised the unwritten law founded upon general customs, particular customs, certain particular customs and particular laws that were of immemorial usage of which judicial decisions were the evidence and were preserved in the public records.

Internation law was made a part of the Roman Civil Law (Jus Civili) about the time of the fall of the Roman Empire, 395 A. D. International Law had then spread over all Europe as adopted by English Ecclesiastical Courts and the Admiral Courts with entry as a factor of Equity Courts and commercial law, and later being the basis of the Louisiana State Law of America. The Roman Civil Law, or Jus Civili, originated in the year 449 B. C. with the XII tables as formed by legislators abroad who selected the best laws from all nations and compiled them into a compact which comprised a simple system of jurisprudence. The Roman Civil Law was divided as follows: Responsae Prudentum, or decisions of the wise men; Decrees of the Senate, which was one of the law-making powers; and the Plebiscita a private law enacted under common statutory provisions.

Future developments of the Jus Civili, in addition to the three main divisions of Roman Civil Law as just mentioned, were the works of Praetor who, upon being elected, published an edict of the existing laws. In 169 A. D., the Institutes of Gaius were published in four volumes. During the reign of Constantine, decrees of the Emperor were codified in the year 438 A. D. During the reign of Justinian, 527 A. D., he revised the Roman laws by making new editions more compact which resulted in a Codex of the Imperial decrees. The digest, comprising fifty volumes was a compilation of the great law givers which represented over two thousand books formerly in use. Later, an abridgment of the fifty volumes consisting of four volumes called Justinian Institutes was compiled for students, it being this digest of the Roman Civil Law (Jus Civili) which spread over all Europe at the fall of the Roman Empire, 395 A. D., and its influence is fostered by men of learning in every European nation.

ENGLISH JURISPRUDENCE.

During the reign of Edward I who succeeded the throne in 1272, a professional class of attorneys first became prominent in England and began to explain the science of law. At this time, definite legislation was an uncommon thing. No one had taken any pains to preserve the text of the ordinances communicated to the king's justices, either in spoken or in written words, because they were regarded as merely temporary instructions. But later, many of these ordinances became customary and sank into the mass of unenacted common law customs.

The great Magna Charta of England, framed in 1215, stands as the oldest charter of the realm and is foremost in the old English statute books. In the fourteenth century, the main laws of England were included in the Magna Charta, the Forest Law Charter, the Statute of Merton and the Statute of Marlbridge. By these charters and statutes, the kings were compelled to submit to many of the grievances the freeholders held against them. At this time, the Anglo-Saxon Dooms or Kentish Code Laws, enacted during the reign of King Aethelbert who succeeded the throne in 600 A. D., were forgotten and entirely out of use.

Digitized by Google

The laws of England were being changed very rapidly during the regnal services by decisions of the king's powerful central court. During the reign of Henry III who succeeded the throne in 1216, three distinct kind of reports of the estates of manors came into use, as follows: 1. A detailed survey of each manor, similar in form to the old Doomes-Day Book which was prepared in six years including and following the year 1080 A. D., during the reign of King William, the Conqueror, and contained a general survey of the manors (land in England) as recorded in two volumes. 2. The Court Rolls of the manors, similar in form to the records of the king's courts, which included a full report of the petty business transacted in each manor court of the manors; and, (3) the annual profit and loss account rendered by the bailiff of the landlords not residing in the manor, similar to the report rendered by the sheriff of a county to the Court of Exchequer. These reports were compiled from sworn testimony of the villagers themselves.

During Anglo-Saxon times, extending from the fifth to the eleventh century, the courts of England included: (1) the Wittenagemot, commonly known as the Appellate Court; (2) the Council of Wittenagemot, a fore-runner which gave birth to the Privy Council; (3) the Shire-Gemot of each county, a County Court which had jurisdiction over civil cases; and (4) the Hundred Courts (tithing courts) which ruled over small cases of local importance. Excepting the Wittenagemot, each of these courts exercised both civil and criminal jurisdiction.

Later in the Anglo-Saxon period, the Aula Regis (Curia Regis Court) was introduced which took the place of the old Wittenagemot Court. From the Aula Regis Court developed the English House of Lords which became the Supreme Appellate Court. Also, there was successively developed from the Aula Regis Court the Judicial Committee of the Privy Council, the Court of Exchequer, the Court of Common Pleas, the Court of King's Bench, the Court of Chancery and the Star Chamber. From the six subdivisions just mentioned, successively developed the Court of Admiralty, the Court Martial, the Judges of Assizes and the Ecclesiastical Court.

The Aula Regis (Curia Regis) Court was established by William, the Conqueror, who succeeded the throne in 1066 A. D. at the close of the Anglo-Saxon period. Its purpose was to advise the king in the determination of controversies among his subjects. It was composed principally of his great officers who were assisted by advocates learned in legal lore, and by the great barons. At first, the Aula Regis Court followed the king's residence until the year 1215 when the Magna Charta enacted that it should be permanently located. Westminister Hall was chosen where the Aula Regis Court remained until the reign of King Edward I. who succeeded the throne in 1272. Thereafter, the Aula Regis Court was superseded by the Court of Exchequer, the Court of Common Pleas, the Court of King's Bench and the Court of Chancery, the four famous Courts of English Jurisprudence.

The Court of Exchequer was established during the reign of King Richard I who succeeded the throne in 1189, and it had jurisdiction over the king's revenue. The Court of Common Pleas had jurisdiction over real property controversies between subjects in which the king took no interest. The Court of King's Bench was established during the reign of King Edward I. The Court of Chancery took its rise during the reign of King Edward III who succeeded the throne in 1326. In America, this court is commonly known as the Court of Equity. In England, it had authority under the Lord Chancellor (a keeper of the king's great seal) to inquire into matters of which the common law courts had no remedy. This court became of the greatest consequence. When the Law Court, by reason of its universality, pronounced imperfect judgment and justice, the case was referred to the Court of Chancery. Jurisdiction of this court gradually grew from needs of the times; from causes in which the precedents furnished no form of action for redress; in cases asking for relief by accident, forfeiture, fraud or mistake; and in actions in which uses and trusts were involved.

In America, Equity Jurisprudence has been established upon a model of the old English Court of Chancery. Some of our states have separated the

Digitized by Google

Equity Court's jurisdiction from the law courts while others, like the federal courts, exercise equity jurisdiction in common law courts when sitting in chancery trying a case which demands equitable relief. Thus, the jury system and parliament being the most prominent characteristics of English institutions, they had the same root in the jurisprudence of other countries and the germs have established precedents in American jurisprudence which are unparallelled other than by the excellency of England's Criminal Jurisprudence of today. Such is a brief outline of English jurisprudence since the Anglo-Saxon period and the feudal system when the freeholder held land during his own life or during the life of another person which constituted the shire moot, and the House of Commons represented the shire moot (freeholders) as the lower house of Congress represents our American people.

EQUITY JURISPRUDENCE.

Equity is the correction of that wherein the law, by reason of its universality, is insufficient. In a broad sense, it signifies "justice." Its object is to render a more speedy and specific relief than can sometimes be had in a court of law. The origin of equity courts (a Court of Chancery) is fully covered by recorded history. We may trace the developments of equity with unerring accuracy. This is an exception because the origin of courts of justice of a nation generally precede its history. Tribunal (a Court of Justice) is derived from Tribune, an Ancient Roman Magistrate chosen to protect the people from oppression by the nobles.

The executive, legislative and judicial rule of the Anglo-Saxons was pure democracy at its beginning. The people of each particular community would meet on stated occasions and frame laws for that locality. Anglo-Saxon and German kings never assumed the special privilege of sitting in a judicial capacity. As at present, justice was administered by local courts with but one general superior court for each particular district which exercised civil and spiritual jurisdiction under "the Wittena Gemote" or "Assembly of the Wisè Men."

The coming of monarchy, exercised by royal authority, checked many rights and privileges of the people. In consequence (during the Norman period which lasted from 1066 A. D. to the framing of the Magna Charta in 1215 A. D.) the prior "Wittena Gemote" or "Assembly of the Wise Men" became the "Aula Regis" or "King's Court" by which judicial business was afterwards referred to one of the three permanent committees known as "The Court of Exchequer" which had jurisdiction over the king's revenue; the Court of Common Pleas which settled civil disputes if the king's interests were not involved; and the Court of the King's Bench which concerned criminal cases and all other matters not falling within the jurisdiction of the Court of Exchequer or the Court of Common Pleas.

Under the Aula Regis (King's Court) the principal officer was known as the Chancellor, the king's private secretary. Later, the Chancellor was given superintendency over state officers and held custody of the king's great seal. He was a member of the Aula Regis (Court of the King's Bench) and of the private council, then called Concilium Privatum, who, by virtue of his official capacity, exercised common law judicial powers. Thus, the Chancellor had authority to repeal letters granted by the king under a writ of Scire Facies; to hear any petition of right offered against the crown, and to issue all writs by which all common law actions were commenced. In consequence, you can see that the Chancellor's Court, an Equity Court, was a Common Law Court, or rather a branch thereof from its earliest history. First, the duties of the Chancellor of the Equity Court were that of a Bishop or other dignitary. Later, he became the king's spiritual adviser acting, with his assistance, as a clerk of the Common Law Courts by issuing the writs and orders, framed by the king's assistance, which commenced the cases by directing the sheriff of the county which commanded that the defendant rectify the wrong as set forth in the writ or appear in court to answer the default. The Original Writ, as prepared by the Chancellor's clerks and issued in the king's name under his great seal and directed to the sheriff of the proper county, proved insufficient. In consequence, the Statute of Westminister 2, enacted in the year 1285 dur-

Digitized by Google

ing the reign of King Edward I of England, originated and gave the Chancellor's Equity Court supervision of three new writs designed in lieu of the old "original writ" to meet newly developed emergencies in Equity Jurisprudence. These three writs were known as follows: Action of Assumsit, Action of Trover, and Action of Tresspass on the Case, which were sometimes called "equitable actions of the law."

During the reign of King Edward III, who succeeded the throne in 1326, Equity (Chancery) jurisdiction gave relief in all cases not jurisdicted by law courts, on account of its deficiency. In 1348, during regnal services of the same king, all matters of justice were referred to the Chancellor of the Equity Court, and all suits in equity were instituted by an English bill addressed to the Chancellor. These bills were written in English but proceedings of common law courts were written in Latin. The English bill contained simple statements of facts alleged for the grounds in which relief was demanded and, if found meritorious, a subpoena was issued which required the defendant to appear in a Court of Equity and answer to the charge.

Equity Courts afforded a correction of that wherein the machinery of Common Law Courts were defective as they could but issue a judgment for damages in a breach of contract while an Equity Court would compel the defendant to fulfill his promise by decreeing special issue on the case. Thus, the Common Law Courts were powerless in many instances as, in the case of an injunction, they had no jurisdiction while an Equity Court could restrain the defendant from committing the intended injury. In financial confusion, during the reign of King Richard II, who succeeded the throne in 1377, Equity Courts protected the poor and helpless against the rich and powerful, assuming in many cases criminal jurisdiction.

Equity Courts compelled the defendant to testify and answer the plaintiff's bill specifically under oath. When the defendant desired testimony from the plaintiff, he would demand it by a "cross-bill." These privileges were not allowed in Law Courts. In early times, every step in a Common Law Court was purchased by a fine which is called costs now. In consequence, a suitor paid for his writ for the privilege of pleading facts; for a speedy trial; to hasten judgment, and for collection of the judgment. The fee in this sell-justice plan of the Common Law Courts was excessive. And in connection with the amount paid the king, together with the attorney's compensation, hindered the agrieved in bringing suit in a Common Law Court hence a Court of Equity was the only alternative by which redress could be secured. In consequence, through a succession of able Chancellors, Equity Jurisdiction became firmly established in England and existed side by side with Common Law Courts well into the nineteenth century when the passing of the Acts of Judicature united the two courts into one Supreme Court of which Chancery (a Court of Equity) became a division.

To summarize, we will look at equity from another viewpoint. The Equity Court, in the exercise of its ordinary jurisdiction centuries ago, is a relic of olden times. When the Aula Regis (King's Court) was broken, and its jurisdiction distributed among the several new courts which originated during the reign of King Henry II who succeeded the throne in the year 1154 A. D., the Equity Court (a Court of Chancery) received its portion. At its birth, it seems apparent that the Chancery did not exist as a Court of Equity as distinguished from the Common Law Courts. Under the early Norman kings, there existed a select council, always in attendance on the king's person, corresponding to what is now termed the "Privy Council." This select body consisted of certain superior officers who were members ex-officio, namely: the Chancellor, Grand Justiciary, Treasurer, Justices of the other Courts, and such others as the king might name, usually Barons, Bishops and Earls.

From the beginning down to the time of King Edward II, who succeeded the throne in the year 1326 A. D., the Privy Council with the king as presiding officer discussed and decided upon applications for the exercise of royal special privileges in regard to matters of judicial importance, both civil and criminal. The king's great council which afterwards became Parliament also possessed, on petition, certain judicial functions. When impossible for the petitioners to

Digitized by Google

obtain a remedy in the Common Law Courts, their applications and petitions were transmtted to the Councils. Apparently, the Chancellor was the principal officer of judicial business which the select Council also the great Council had to advise upon or transact. Early, it became the custom of the king to send certain petitions, addressed to him, praying for extraordinary remedies by means of a Writ of Certiorari, Information, Habaes Corpus, Mandamus, Quo Warranto, Procedendo or Prohibition. These petitions were directed to the Chancellor and Master of the Rolls or to the Chancellor alone.

It was during the reign of King Richard II, who succeeded the throne in the year 1377 A. D., that the Chancery (Equity Court) was established as a distinct and permanent tribunal, having separate jurisdiction with its own peculiar mode of procedure. From the time of the reign of King Henry VI, who succeeded the throne in the year 1422 A. D., jurisdiction of the Equity Courts constantly grew in importance and, by the time of the reign of King Henry VIII, who succeeded the throne in the year 1509 A. D., they expanded into a broad and boundless jurisdiction under the ambitious wisdom, care and power of Cardinal and Chancellor Thomas Wolsey whose unerring plans were encroached upon by developments of the great church reformation which eventually changed the face of English history.

Equity jurisprudence is a legal doctrine which is distinguished from common law proper simply in a historical way. Like law, equity seeks to do justice between disputing litigants. It claims a superior purity and asserts the right to come before law proper when in the interest of justice. In other words, equity is that which we conceive that the law should be. By necessity, equity sprang from the imperfection of common law as a distinct system of administering justice. Necessities of communities, rapidly advancing into civilizaton, call for an expanding judicial system. Occasonal injustice, resulting from the application of strict legal rules and universality of the law proper, demands the existance and remedy of a jurisdiction unhampered by forms and precedents in the manner by which law courts have been adjudged.

Looking back to the time of royal principles of absolute government, we find the king to be the foundation of justice when much jurisdiction was committed to his judgment while sitting in the common law courts. If not so committed, jurisdiction was mothered by the monarch and could be exercised by him personally as head of the judicial system. Subsequently, in the multitude of the king's pursuits, he had little time for legal controversies so the duties of equitable pleas were turned over to his Chancellor. Equity jurisdiction has developed in history of law in response to necessities of the hour. Courts of justice have been created to meet such needs. In Rome, as in England, equity jurisprudence experienced a historical change and variety in the nature of an absolute evolution apart from strictly legal doctrine. The classification of legal learning; the organization of superior tribunals, and the enactment of new statutes in extinction of inferior ones are all due to accidental demands, coincidences and succession of historical happenings of the past.

In equity practice, the complaint should show that the complainant had no other remedy at law. Equity jurisprudence, developed in the Chancellor's Court, came in time to include the interests of those persons whom the law regarded as incompetent such as idiots, infants, lunatics and married women. The subject-matter of charities and trusts were also distinctly equitable. Damages or injury resulting from accident and fraud or mistake were relieved by the Equity Court also.

Both the Law Courts and the Equity Courts must administer the best rules else one or the other will cease to be a court of justice. The question between Law Courts and Equity Courts is a matter of jurisdiction only, the information being as to the competency of either court and as to what tribunal has the authority to decide a given controversy. The real distinction between Law Courts and Equity Courts lies in the different methods of administering justice in the manner of procedure, evidence and remedy.

A Court of Equity can apply itself directly to the conscience and knowledge of the litigant and compel him to testify by answering questions annexed to the pleading of the adverse litigant. But, under former rules of the Com-

Digitized by Google

mon Law Courts, the plaintiff or defendant could not testify on trial of the issue. And, in Common Law Courts, the testimony of witnesses was taken orally in open court while, in equity practice, testimony was presented by means of a written deposition to the judge who would decide both questions of law and questions of fact without the aid of a jury. Also, jurisdiction of the Common Law Courts is limited to damages in money or to claim and delivery of specific personal or real property. While, in Equity Courts, conveyances may be decreed, fraudulent deeds may be set aside, injunctions may issue, an instrument absolute on its face may be deemed a mortgage, and a contract for the sale of real property may be specifically enforced. In the Law Courts, the sheriff may seize the property of the judgment debtor by execution and then sell it, using the proceeds for satisfaction of the judgment. In Equity Courts, if a judicial mandate contained in the final decree or order is disobeyed, the delinquent is punishable by a fine or imprisonment for contempt of court.

In Equity Courts, we speak of the complainant and the respondent. In Law Courts, we speak of the plaintiff and defendant. In Equity Courts, the first pleading is called the "petition," in Common Law Courts the "declaration," and in Code practice the "complaint." The answer in equity pleading and Code practice corresponds to the "plea" of the defendant in Common Law Courts. In equity, members of the bar are called Proctors and Advocates in place of Attorneys and Counsellors as in law courts. A final determination of the rights of the parties in a judicial proceeding in equity jurisprudence is called a decree instead of a judgment. Thus, some of the technicalities peculiar to equity practice may be outlined more fully.

Excepting Pennsylvania and Rhode Island, equity jurisdiction was established in the thirteen original colonies of America and existed distinctly from common law courts until the colonies became states when the equity courts either established a separate tribunal or united with the common law courts by which equity was administered. In the American Colonies, Chancery (Equity) Courts were established in many places where they still remain as is the case in New Jersey and Virginia. In other states there has been a mingling of legal and equitable remedies and the distinction of equitable jurisdiction has vanished so far as Chancery is concerned. In several states, common law and chancery jurisdiction is exercised by the same courts without having changed the essential distinction between legal and equitable principles. A few of the states have retained separate common law and equitable tribunals while, in other states, equitable relief is administered by means of common law or statutory enactments. In Arkansas, Florida, Georgia, Illinois, Maine, Maryland, Michigan, New Hampshire, Massachusetts, New Mexico, Rhode Island, Vermont, Virginia, West Virginia and the Federal Government, law and equity is administered in the same courts although each is distinct in form. In Alabama, Delaware, Mississippi, New Jersey and Tennessee, separate law courts and equity courts are maintained. The Civil Code system has been adopted in the remaining states. In consequence, the distinction of law and equity courts has been abolished and all relief is supposed to be administered through uniform procedure of civil and criminal jurisdiction.

COMMON LAW.

In the earlier history of English jurisprudence, we find certain laws recognized and in force throughout more or less extended districts, the origin of which is unknown. Generally, they are customs of immemorial usage grown to be recognized and enforced as law. Thus, they have originated as decisions of kings, or enactments of councils and legislative bodies, records of which have been lost in the past. These well established usages became doubly authenticated by the decisions of judges from the earliest days, modified and enlarged to suit the growth of ideas and emergencies of advancing civilization. They form the great body of English law, finding authority not in Parliamentary enactments but in their immemorial and continued usages and sanction of the courts from the earliest days.

How many understand the meaning of the oft-used phrase "the common law?" We say, "such and such is the common law." The statutes may be otherwise. But, what is "common law?" Justice Swayne designed it as "rea-

Digitized by Google

son dealing by the light of experience with human affairs." Blackstone called it "nothing more than custom arising from a universal agreement of the whole community," a custom handed down by tradition, use and experience. In other words, "it is something that grows and expands with the new ideas of justice and right." We are accustomed to this phrase "the common law" when referring to the common law of England because, when our ancestors came to this country, they brought with them this "common law" and claimed it as their native right.

Strictly speaking, the United States has no common law. Up to the signing of the Declaration of Independence, the English common law was as much a part of our system of jurisprudence as it was for that of Great Britian. Our Constitution declares that the judicial power of the United States extends to all cases arising under the Constitution, Acts of Congress, and treaties. There is no principle which penetrates the Union and has an authority of law not embodied in the Constitution and the Acts of Congress. However, as the common law was the under-pinning upon which the Constitution was founded, we must resort to the common law for a definition and interpretation of its terms. All the states, excepting Louisiana, have adopted the English common law as their local law, subject to statutory alterations, but only to such an extent as suits their conditions.

As a beginner, any one who makes a study of law should confine himself within the lines of common law learning rather than to the statutes of any particular state. In completion of the work, he should direct his attention to the federal statutes and to the statutes of his home state. A knowlelge of statute law is required for the solution of questions arising under its terms and enactments, equally because those statutes change and modify the common law and may have very materially altered the principles he learned to follow while first making a study of the common or unwritten law. In a code state, the codes and statutes must be given strick attention and precedence as common law is only authority in a case of the last resort.

CODE LAW.

The English common law customary codes began to be put into writing soon after the arrival of the Monks in Thanet who were headed by St. Augustine around the year 600 A. D. Later, King Aethelbert of the Kents, after having received the Christian faith, caused the common laws of his people to be set down in writing, the first real step taken to codify the unwritten laws of England which was in imitation of the Romans. King Aethelbert's code laws consisted of four score and ten brief sentences of the general rules called to memory by council of his wise men of which this became the foundation of the Kentish Code Law. In the seventh century, by council of the wise men, subsequent kings added two score and ten new "dooms" to the ninety original "general rules" of King Aethelbert.

Before the eighth century, the West Saxons received Christianity and reduced their unwritten common law to writing, historically known as the laws of Ina. However, King Aethelbert's Kentish Code Law was the first step taken in the foundation of English Statute Law as reduced from the old common law customs, maxims, definitions and judicial decisions. About 900 A. D., Kng Alfred, the Great, found it advisable to compile a Doome-Book for general use in the whole English Kingdom, containing the principal maxims of common or unwritten law, the immemorial customs and usages handed down from generation to generation. Alfred's Doome-Book measured and exacted penalties for misdemeanors, and the forms for judicial proceedings.

From corrupt practices of the established Danes who followed Alfred's reign, his code of law fell into disuse to a certain extent after having been debased with other customs which caused the extinction of Anglo-Saxon jurisdiction about the year 1000 A. D. Beginning the reign of Edward, the Confessor, in 1041 A. D., three powerful Earls dominated Great Britain, namely: Godwine of Wessex, Leopic of Mercia, and Siward of Northumbria. From their three distinct laws, King Edward compiled one uniform digest to be observed throughout the kingdom as English jurisprudence. This digest was

Digitized by Google

nothing more than a repetition of the law which developed from a union of the English Kingdom about 955 A. D., under Edgar, who was Edward, the Confessor's grandfather. And the digests of both Edgar and Edward were a renewed and somewhat revised promulgation of the Doome-Book Code of Alfred, the Great, which was compiled about 900 A. D., as before mentioned.

In 1066, William, the Conqueror, succeeded the throne. He pictured his laws mostly by a repetition of the Codes instituted by King Aethelbert and his followers. As before mentioned, these codes compiled a collection of immemorial customs, maxims and rules of procedure in common law of higher antiquity than memory can reach. In other words, code law is the unwritten common law, set down in writing, which subsequent rulers so frequently promised to maintain when pressed by international complications or by domestic discontent. Or, it is the law which our ancestors endeavored to maintain during the Norman conquest of England.

MUNICIPAL LAW.

Blackstone defines municipal law as a rule of civil conduct prescribed by the supreme power of a state commanding the right and prohibiting the wrong. In other words, municipal or positive law is a rule addressed to an intelligent human being by an intelligent human being who is in a relation of authority in an independent political society. Law must have a restraining power of sanction to secure its enforcement. It must reflect the judgment of the bulk of the people in the sovereign state where it is promulgated. This restraining statute applies to an entire state or territory. And a local statute to a effective. In consequence, the sovereign body enacting law must have the power to compel obedience by inflicting a punishment on transgressors. It must not only have the power thus to compel its commands, but it must have a disposition to do so, otherwise the so-called law would be a dead letter of which there are many examples of such on our statute books today.

Municipal or positive law is that system of rules of human action established by the governing power in a state, either written or unwritten, the law with which the advocate has principally to deal. It being different from moral law in that it is a law laid down by definite authority and enforced by definite sanction. A "positive" law because it is imposed by an authority having undisputed power to insist upon its observance. Municipal or positive law is divided into two classes as follows: Substantive law, which creates and defines legal rights; and adjective law which is that system of rules provided for and regulating the enforcement of rights and the redress of wrongs. Again, substantive and adjective law are each divided into public law and private law. Public law is that system of rules which govern the rights of the state and regulates the relations of the state with its people. Private law includes all rules which regulate the relations of the people of a state between thmselves.

Adjective law concerns itself with the remedies applied when legal rights have been violated, and with the methods of procedure by which these remedies are administered. Prospects of the application of these remedies is the chief incentive for obedience to municipal law.

Substantive and adjective law are derived either of common law provisions or of statutory origin. A statute may be defined as a law which legislation creates as a single formal enactment, and may be either affirmative or negative. As to their relation to the old common law doctrine, statutes are either declaratory or remedial of which one affirms principles and the other modifies them. As to person, statutes are either public or private. A public statute applies to a people in general. Private statutes apply to a single designated person. As to territory, statutes are either general or local. A general statute applies to an entire state or territory. A local "limited" statute to a limited portion or section of the territory.

As to the results or non-compliance with its provisions, a statute may be either mandatory or directory. A mandatory statute renders acts void unless its provisions are strictly complied with. A directory statute lays down certain rules relating to particular acts, which acts may be valid although such

Digitized by Google

rules are not complied with. Where statutes have been enacted, common law is still in force unless expressly repealed or annulled.

INTERNATIONAL LAW.

International Law (the law of nations) is a rule of civil conduct established by universal consent among the civilized inhabitants of the world to regular mutual intercourse between nations. International Law may be considered as public and private. Public International Law treats of the relation of one nation with that of another in peaceful negotiations and in armed disputes. Legal relations of a private individual of one nation with a private individual of some other nation, as determined by different bodies of national law, form the subject-mater of private International Law.

In tracing the development of the laws of nations, history explains that the Greeks new nothing of International Law. In this respect, so far as their intercourse with other nations was concerned, they were typical barbarians. Piracy with them seemed an honorable profession. Neither Plato in his Republic nor Aristotle in his political career gave any space or thought to International Law. The early Romans were also great foes to civilization. Foreigners who came into their jurisdiction were seized by slave dealers and held without protection against any grievances which befell them.

Later, the Romans developed a kin to International Law called the "Jus Genthium," applicable to their own people in relation with the people of surrounding nations or tribes. The Germans developed a similar law called "Jus Communi Germanica." In fact, a system of International Law spread throughout all Europe at the fall of the Roman Empire in the year 395 A. D. From this time on until 800 A. D., the first and the dreariest period of the Middle Ages, little progress was made on account of its having been a period of war, lawlessness and brutality. Shipwrecked marines were killed and defenseless cities were plundered by fitted pirate exploiters. Such were the changes of international development during the Dark Ages.

From 800 A. D. to 1500 A. D., during the second period of the Middle Ages which dates from the close of Allodial Tenure and the commencement of Feudal Tenure to a close of the Feudal Tenure System, much progress was being made principally on account of the Crusaders (Christians). Nations had continually waged war prior to this time, and the Crusaders rebelled throughout all Europe at this particular time by co-operation of Christian nations in rescue of Christ's birth-place from the treacherous and barbarious Mohammedans. This influence caused a union between Christian nations of people who considered themselves equals in place of enemies. In consequence, treaties and compacts were held more sacred, which paved the way for more stringent commercial relations between nations. Such were the alliances between Christian nations while heathenish nations were held under a curse publicly proclaimed of which it was considered illegal for them to negotiate with a Christian nation.

Around the close of the Feudal System in the year 1500 A. D., alliances, commercial bodies, diplomatic relations, compacts and treaties were being established everywhere on account of the wars being waged between particular nations, and on account of maritime and commercial developments of other nations in connection with the exploits to foreign lands, especially in relation to the discovery of America, not making mention of the many other colonial formations, conquests and the tide of immigration which swept from nation to nation as to newly discovered America of which each instance required commercial and inetrnational regulations applicable to the particular need at some particular time. Thus, the development of International Law has followed the course of necessities. Either public or private law imposes on disputants an obligation of conducting their quarrels in a manner which should not damage third parties. In like manner, the law of nations seeks to give the enemies at war as large a freedom as possible in the destruction of property belonging to each other, but requires that the commerce of a neutral nation shall be protected.

Digitized by Google

In its broadest sense, any agreement between two or more nations is called a treaty. The earliest of modern treaties were written in Latin. A treaty may regulate permanent conditions, such as international boundaries, or it may treat of specific interests such as trade reciprocity for a brief period only. Reciprocity, as spoken of in this branch of the law, is a mutual obligation created between two or more nations. The United States Constitution gives the treaty-making power to the President who is obliged to act concurrently by and with the advice and consent of two-thirds of the Senate which can act only on the finished work of the President by confirming or rejecting the treaty involved. In the United States there is no limit on treaty-making power. All treaties known to international history are within the range of this grant of power. Under it, Florida was purchased from Spain and the constitutionality of this purchase has been sustained by the Supreme Court. As mentioned in the Constitution, the field of national legislation is limited by a grant of power to Congress. Judicial authority is also limited, but there is no limitation placed on the authority of the President and the Senate when a question of creating a binding treaty is involved.

Ambassadors, Charge d'Affaires, Envoys, Ministers Plenipotentiary, Ministers Resident and Consuls are the terms applicable to agents who conduct negotiations between nations. An ambassador is a diplomatic officer of the highest rank in that he represents the person of his sovereign. No person is sovereign in this country as that special privilege and power rests solely in the American people. A consul does not represent the sovereignty of the nation by which commissioned; he represents its commercial interests instead. His business is with the affairs of individuals, shipmasters and traders. And he need not be a citizen of the country which he represents. A consul's authority comes from the government of the country in which he is a resident.

CRIMINAL LAW.

Criminal law is that branch of jurisprudence which treats of crimes and punishments. Jurisprudence is the science of law. A crime is an act committed or ommitted in violation of public law. Crimes of our present modern law were regarded as torts by the Mosaic and other ancient codes. A tort is a civil injury arising idnependent of a contract. A pecuniary fine was the punishment inflicted for all offenses during the earlier Anglo-Saxon period around the fifth century. The Penal Code was like a price-list of various offenses against personal injury.

Even during the reign of King Alfred the Great, in the ninth century, criminal law provided that the culprit, on conviction, should pay a sum of money to the relatives of the injured party and another sum to the community at large. The amount of the fine depended mostly on the rank of the injured, which was determined by his wealth. If the offender robbed his equal, he was obliged to return three times the amount. If he robbed the king, he returned nine times the amount. If from the church, he returned twelve times the amount. Theft was punishable by death in some instances. Twelve shilling was paid for the loss of a foot; twenty for the loss of a thumb. Thus, the ancient penal price-list enumerated the amount to be exacted for the different offenses. Penal fines were more than a minor portoin of the king's revenue. During the reign of King Henry II., 1164 A. D., the Constitution of Clarendon was enacted. The second paragraph held that a clergy accused of any crime would be tried by civil judges and not by the church.

Satisfaction seemed to be the basis of remedial justice, both civil and criminal, under the ancient system of law. There was a natural human impulse toward the principle of relation, or "an eye for an eye, a tooth for a tooth," as the most perfect embodiment of justice. The court was credited with having stood in place of the injured party and demanded the measure of justice which the latter would regard himself as being entitled to. On this ground, Sir Henry Maine explains those doctrines of Roman Law which made the penalty for open theft twice as severe as the penalty for secret theft. In open theft, the injured party in hot pursuit of the offender would demand

Digitized by Google

the maximum punishment while, in secret theft, he would be indifferent as to the punishment of an offense which he did not witness and the circumstances of which he might have forgotten.

Atonement or perfect satisfaction must be left to the final judicial sentence of divine justice. If the purpose be professed to adjust human penalty to the demands of eternal or endless justice, problems of great philosophical reasoning ability concerning powers and laws will be confronted. Should the State take human life? Will one wrong justify another? These questions are answered in various ways. Has the State a right to self-preservation? Has the individual surrendered that right by having entered into the relations of civil society? Leaving from view the just reward of the offender, criminal penalty is justifiable and demanded for the prevention of crime. This is being accomplished by removing the offender by death or seclusion; by reforming him through discipline of a penitentiary, and by preventing others through fear by the warning of his example.

Lynch law can find no justification in the science of reasoning, but, in practice, there are fewer instances of murder and other felonious offenses in the Southern States because the offender has the certain respect and assurance, if detected, of dying before sundown. Although no one familiar with delays offered by new trials, appeals and denials of justice, oftentimes caused for pecuniary interests, which distinguish criminal jurisprudence in certain localities, would advocate the introduction of that system of mob rule into the riotous and disorderly communities of other localities. Until within recent years, the administration of prison regulations was wicked to a high degree. Indefinite sentences for the first offense have been found fruitful of good as has been proven in the management of reformatories.

Anglo-American law proceeds on the theory that no innocent man should suffer, while the penal or criminal law of continental Europe seems devised to make sure that no guilty man escape. There is no indictment by a grand jury; no formulation of a specific charge; no open arraignment for a definite crime; no opportunity for a fair defense; no safeguards in the interest of personal liberty, and no pretense at impartial investigation. Under the Anglo-American law, all is different. In this country, persons accused of crime are protected by many provisions of the "Bill of Rights" found in our constitutions, both State and Nation.

Thus, the Constitution of the United States provides against unreasonable searches and seizures; it demands an indictment by a grand jury; it secures the accused against being twice placed in peril or danger for the same offense; it provides that a prisoner shall not be compelled to testify against himself, and that no one shall be deprived of life, liberty or property without due process of law; that excessive bail shall not be required; excessive fines shall not be imposed, nor cruel and unusual punishment inflicted. The Constitution provides, under the Fourteenth Amendment, that no State shall make or enforce any law which would abridge the privileges of immunities of citizens of the United States, and that no State shall deprive any person within its jurisdiction equal protection of the law.

Under our present system of jurisprudence, a person accused of crime can avail himself of the services of counsel; he can compel the attendance of witnesses in his behalf; he can prepare for trial and have his day in court, and he is now generally allowed to testify in his own behalf. He must have been charged with a specific crime of which for proof the testimony against him must be limited. He is presumed to be innocent until he is proven guilty. The burden of proof rests on his accuser, and he is entitled to the benefit of every reasonable doubt.

Three points should be established on a criminal trial, namely: the "corpus delicti", or the body of the offense which is the commission of the crime itself as an independent fact; connection of the accused with the crime committed, and the guilty motive of the prisoner which is generally called "premeditated intent". The law presumes that every one contemplates the natural consequences of his act. An act done by a lunatic or an idiot is not a crime. Voluntary intoxication or a sickly criminal disposition will not

Digitized by Google

excuse the defendant. A married woman can no longer defend on the ground that the crime was committed in the presence of her husband. An act committed in self-defense, although otherwise criminal, is justifiable. Self-defense includes the right to defend one's wife, child or servant and to resist the commission of a felonious offense in one's presence.

An indictment should state but one crime in that the prisoner may have an opportunity to prepare his defense. Proof by the prosecution of another crime other than that charged in the indictment is an error for which a new trial may be granted. However, the prisoner may be identified as a habitual criminal, and in some cases the prosecution has been allowed to show the commission of another offense in order to prove motive. Ordinarily, the prosecution cannot show the general bad character of the prisoner, but if the defendant alleges testimony to show his general good character, he opens the way for rebutting evidence on a part of the people. An accused may challenge or object to a jury. A challenge may be to the array when the whole panel was improperly returned, or it may be to the polls where an individual juror is objected to because of his incapacity to serve, his conviction of a felony, or on account of insanity or bias. Peremptory challenges are also allowed when no cause of objection is specified.

In certain cases, violence toward the person of another is not unlawful if committed by a public officer in the discharge of his official duties; by any one in the arrest of a felon; by a parent, guardian or schoolmaster in a reasonable correction of an infant; by a common carrier in ejecting disorderly passengers, and in his enforcement of reasonable regulations; by any one who restrains a lunatic to save him from the consequences of his own misguided action, or if the violence is committed in self-defense. A husband is allowed to inflict reasonable chastisement on his wife, although the best authorities of today deny this right which was clearly recognized by the old common law by giving the husband a right to chastise his wife so long as he did not use a stick thicker than his thumb.

All mankind is interested in the establishment of justice and in the punishment of crime. The territoriality of crime is now recognized in the codes of all modern nations. In ancient law, crime was a corporate or family act of which its punishment involved not only the principal offender, but his wife and household also. Other than by courtesy, no code of law prevails outside of the territorial limits of the sovereign power that enacts such law. Then, the extradition of criminals rests entirely on international comity, or on the stipulations of treaties of which the United States has created many. Political offenses are not included among the crimes for which extradition is allowed. Only very heinous crimes, recognized as such by the universal conscience of man, admit of this remedy as in a case of murder, felony, arson, rape, theft, and like types of felonies. American jurisprudence is far more lenient in criminal action than is the case in English jurisprudence.

CONSTITUTIONAL LAW.

A constitution is the organic and fundamental law embodied in a written document of a free people living in a prescribed territory. It secures citizenship and determines a citizen's duties as a free man. Organic law is the constitution of a government and is altogether written. Fundamental law pertains to the foundation and essentials of its existence. Written laws of the United States include the Federal Constitution, Statutes, Treaties, and the State Constitutions and Statues.

Constitutional law is that branch of jurisprudence which treats of the fundamental principles of a government and the practical exercise of the powers of that particular government in conformity with its principles in connection with the construction to be given to the powers of government in their application to the relations of its people. American Constitutional Law includes the written constitutions and their construction. The principles of our constitutions are to be found in the decisions of the Supreme Court and in the works of authority. Constitutional law is sometimes called Political Law. Briefly speaking, constitutional law is nothing more than the formal acts of a sovereign power endorsed by a free people and kept within the bounds of the fundamental principles embodied in a written constitution.

Digitized by Google

Sovereignty (sovereign power) is the absolute, indivisible and uncontrollable supreme power by which a Nation or State is governed. The will of the people is the sovereign power in a republic. A king holds the sovereign power in a monarchy. Sovereign power in the United States was conferred by the American people, with the exception of a limitation of power withheld and vested in the people of the several States as concurrent legislation subject to the approval of Congress. A confederation is the last and highest step which can be taken in the association of sovereign States without the creation of a single federal State. A federal State is a union of several States. Our Constitution made the United States a federal government by a union of the several States which, prior to that time, were a confederation of States and not a single federal State.

Through the Constitution, the people of each State became citizens of the United States. The Articles of Confederation, as agreed upon by the State delegates and ratified by the several States, were replaced by a Federal Constitution which created a Federal Government and a State Government; the former having a grant of power and the latter having a limitation of power. In consequence, we are under the supervision of both a Federal Union and a Sovereign State. The provisions of the Constitution looked to an indestructible union composed of indestructible States by having provided for the perpetuity of the Sovereign States.

The unwritten English Constitution included the common law customs, decisions of the courts, definitions and maxims, such as: that the king could do no wrong; and, that his advisers were likewise responsible for his wrongs. An unwritten constitution sometimes becomes parts of a written constitution through usages and customs delegated by the supremacy of the courts. Such was the case in the formulation of the United States Constitution which is a combination of English constitutional and colonial principles, including amendments, compromises and other new features created to meet demands for the combined States of the newly formed federal union.

The constitutional provisions evidence the actual frame of government. Its preamble defines and introduces our Constitution as having declared a purpose to form a more perfect union through its fundamental law of a federal State, and embraces the principles upon which the State was founded, being the body of rules and maxims framed in accordance with which sovereign powers are exercised.

When the people are progressive, a written constitution may stop the growth of unfavorable political conditions which, seemingly, is the case in America today. This difficulty may be overcome by amending our Constitution to meet present needs. On the other hand, when the rulings of the legislative body are such that would endanger the welfare of the people, as has been the case from time to time, a rigid constitution works an advantage for the people.

Under our dual Constitutions, which means and expresses a double form of government, we have the Federal Constitution which is the highest authority in the union and a grant of power; also the State Constitution, which is a limitation of power and the supreme law of the several states. The uniform plan for the construction of a Constitution declares the rights of the people by its "Bill of Rights," and declares the frame of government of its people. The "Bill of Rights" of our Constitution is the fundamental principle of liberty of the people as expressed by the first ten amendments of the Federal Constitution. Its purpose was: to provide for the future by having involved requisites to render a people prosperous and happy.

The Constitution divides the political power into three distinct branches, as follows: The Legislative Department which makes, alters, amends and repeals the laws; The Executive Department which executes the power to enforce and design laws; and, The Judicial Department which interprets and applies the law to its proper cases. The three branches are inseparable, either being an auxiliary to the others. This frame of government further pictures the manner in which our sovereign States should exist in representation of a republican dual or double form as distinguished from a monarchy and aristocracy.

Digitized by Google

We will review the development of the Constitution. The "Articles of Confederation" was the first express compact adopted by the New England States and marked the constitutional birth of the United States as a union. In November, 1777, these Articles of Confederation were adopted by our first Congress and submitted to the State Legislatures for ratification. In two years all the States but Maryland had ratified; in 1781, Maryland ratified which concluded the approval of all the States and the Articles of Confederation went into effect. These articles proved inadequate in that, by its application, Congress was unable to enforce its provisions in the way of collecting revenues, regulating commerce, making treaties and controlling the Colonial Legislatures.

The inadequacy of the Articles of Confederation proved the need of a stronger government, but they served to promote the idea of a strong national government at a time when it was most required. The first Congress was nothing more than a great committee without sovereign authority. They acted by committees which were slow and indecisive. In fact, Congress could not enforce obedience on any Colony that chose to resist her efforts.

Looking back to the year 1778, English Parliament almost unanimously adopted proposals to restore the New England States to things which existed in America before the Revolutionary War with the exception that England declared her intentions not to exercise a right to tax the Colonies. But, the Colonies of America resisted and nothing short of independence would satisfy them; consequently, in 1782, preliminary articles of peace were signed by John Adams, Franklin and Jay. The formal treaty was afterwards signed at Paris, France, in 1873, and ratified by the American Congress in 1784.

As mentioned, the weakness and inadequacy of the Articles of Confederation gave rise to many schemes for a new and improved government, but they favored State independence to a greater degree than national unity. In 1786, the Annapolis Convention took place in which nine States appointed delegates, but to which but five responded and were present. Speedy measures were taken for the calling of another convention which took place in 1787, the memorable Federal Convention which met on the second Monday of May and adopted the first measures of our present Constitution. There were but few delegates in attendance. Up to the 25th of the month but nine States were represented; on that day Governor Randolph read the Virginia plan which explained the foundation of a new government. Charles Pickney read the South Carolina plan. The two plans were referred to a committee of the whole. James Madison was author of the Virginia plan, the earliest sketch of our present Constitution.

The above mentioned committee amended and debated on the two plans until about the middle of June. On June 13 the committee reported to the Convention nineteen resolutions which were based principally upon the Virginia plan. By July 26, the resolutions had increased to twenty-three. In August, a committee of detail reported the resolutions in the form of a document which became the text for the basis of the Constitution.

In September, a new committee on resolutions was appointed; they reported in full, and on the seventeenth day of the month the Constitution had received the signatures of all the delegates; then went to the several States for their ratification. May 29, 1790, Rhode Island, the last of the number necessary for adoption of the Constitution, gave her consent which finished the work of construction on the most notable document ever framed by a free people.

In September, 1788, Congress convened and fixed the time for a government inauguration which took place March 1, 1789, resulting in that George Washington was elected the first President of the United States. He took the chair April 30, 1790, twenty-nine days before the Constitution had been fully ratified by the required number of States.

STATE CONSTITUTIONAL LAW.

A State is a community of free people living within a prescribed territory to enjoy rights as laid down by their laws and customs. It is the whole

Digitized by Google

people of one body politic united together to enjoy what is their own, and to do justice to all. The sovereign part is the will of the majority; the subject part is the will of the minority.

Cooley defines a State as a body politic, or society of men united together under common laws for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength. The term "State" is often used in the place of and as having the same meaning as the word "nation", but the term "nation" is more synonymous with the term "people". This is confusing because a nation will sometimes be divided, politically speaking, as to constitute several States.

A State is sovereign when there resides within itself a supreme and absolute power without a superior. It is dependent when, in any manner whatever, its authority is limited by an acknowledged power from a superior. The States of the United States have never enjoyed complete sovereignty, and they do not now possess it. They have always been and are now subject to a common superior in respect to their relation with foreign power. First, the States were governed by the king and Parliament of England; then by Congress of the Revolution; then by the Confederation, under the "Articles of Confederation"; and now by the United States.

The Constitution of the United States provides that States may be admitted into the union, but it does not provide or prescribe definite rules as to the manner of their admittance. Consequently, this matter is left within the power of Congress. The establishment of a State Constitution by the people of a Territory, asking for admittance into the union as a State, may be accomplished as follows: Congress may decide whether the proposed State shall be admitted. When permitted, the people of that particular Territory frame a constitution to be accepted by Congress before its admittance. The people of a Territory can not force their way into the union by having adopted and framed a Constitution, thus assuming to act as a State.

The original thirteen Colonies, except Connecticut and Rhode Island, drew written State Constitutions. The government of these States and the additional States admitted is based upon a written Constitution which is the fundamental law of a State. As within the Federal Constitution, the makeup of a State Constitution generally consists of a frame of government which is divided into the Executive, Judicial and Legislative Departments, a "Bill of Rights" or "Declaration of Rights" and miscellaneous provisions governing pardoning powers, military tactics, educational privileges, recall of public officers, initiative and referendum, State institutions, public buildings, counties, municipalities, corporations, taxation, water rights, harbor privileges, the State indebtedness, homestead exemptions, foreign emigration and minor subjects which vary in extent under the different State Constitutions of the United States.

The bicamerial legislative system, which means a double form, prevails in all the States. The double form comprises the Assembly or House of Representatives and the Senate. The two houses form the "general assembly". Both branches are elected direct by the people of the State. The States are apportioned into districts, the Senatorial districts being larger than the Representative or Assembly districts. In California, there are forty Senatorial districts from which forty Senators are elected for a term of four years each; and eighty Assembly districts from which eighty Assemblymen are elected for a term of two years each. The Legislature meets once every two years. In some States, every year. Members are paid per diem, or an annual salary, depending on the State.

The Chief Executive Officer of a State is the Governor, head of the Executive Department whose duty it is to see that the State laws are properly executed. His qualifications represent citizenship of the United States, age and residence in his State; the term of office ranges in the several States from one to four years. He is not eligible to re-election in some of the States.

A bill making the President ineligible for re-election has been before United States Congress; it was introduced by our fair-minded and far-sighted Senator John D. Works of California.

Digitized by Google

A Lieutenant Governor is elected in each State, whose duty it is to preside over the senate without a vote unless a tie; and act in the capacity of the Governor in case of his absence which is sometimes prolonged to the extent of six or nine months in case he is seeking a higher office with the expectation of a higher compensation. In that event, the Governor's salary continues as though he were on duty.

The duties and powers of a Governor correspond in his State to those of the President of the United States in that he acts as Commander-in-Chief of the State Militia; that he is aided by the assistant Executive Officers; he convenes the Legislature in special session, when it is deemed advisable; vetoes bills, unless a sufficient majority of the House pass them over his head; has power to grant pardons, and appoint State officers unless elective.

Assistant executive officers generally comprise a Secretary of State, a Comptroller or Auditor, Attorney General, Surveyor General, Treasurer, Superintendent of Schools, State Librarian and State Printer, of which each has an independent duty in the executive functions.

The State Judiciary is vested in a number of courts consisting of a Supreme Court, Circuit Court, Court of Common Pleas, Justices Courts, District Courts of Appeals, Superior Courts, Probate Courts, Police Courts, and others of inferior and limited jurisdiction.

Common Law and Equity Courts have been abolished in Code States although the distinction in actions still remain, but adjudicated in the same courts. Judges and Justices of Courts are generall elected by the voters.

Minor civil divisions of a State are divided into counties as was the case in England. In Louisiana, counties are called parishes as was the case in France, from whence the State of Louisiana has pictured her civil law distinct from the laws of other States of the United States. Counties originated from the small settlements which united for protection in early days and reserved the exclusive management of a prescribed community. Counties or parishes form the State, and the States unite to form the Federal Union. County officers are generally understood as a Board of Commissioners or Supervisors, Sheriff, Coroner, School Superintendent, Prosecuting or District Attorney, Surveyor, Treasurer, Assessor and a Tax Collector. Of these, some represent the State also.

Each county is divided into townships conducted by Supervisors of Roads, Township Trustees, or Selectmen, a Clerk, Treasurer, Overseers of the Poor, Constables and Collectors of Taxes. These conditions vary in the different States. Cities, townships and counties are incorporated either by general laws or special grants which legally unites them for the conducting of a local government. These public corporations establish a local government but subject to the general laws of the State.

The taxing power of a State and of the Federal Government is concurrent, although either cannot tax agencies of the other. A State is expected to maintain a school system. In the rural districts, the ungraded primary branches are taught; in cities, towns and villages, graded high schools and high school advantages are offered. State Normal Schools have been established and are supported by the State in many instances; although a small fee is generally charged the students to pay running expenses. Normal schools are intended to prepare teachers for common schools.

Schools, churches, charitable and other public property are exempt from taxation; private colleges and universities, unless a regular tuition is charged, are supported or partially supported by the State, being intended for a more finished education than can be had elsewhere.

Charitable and penal public institutions provide for incapable parties who, by reason of certain physical or mental ailments, must be provided for; and provide for the imprisonment and forfeiture of rights of those who have committed a wrongful act.

Canals, turnpikes and other public improvements are, in some instances, controlled and owned by the State, consequently much benefit has been derived therefrom by way of cheaper transportation facilities not throttled by

Digitized by Google

private exclusive control of public necessities. It is only a matter of time until public utilities will be owned and operated by municipalities and the State which will make it profitable and possible to strangle excessive private gains.

The police power of a State has an inherent right to control occupations of life, domestic relations, private rights, public rights, and all other comprehensive portions of society in that every individual may enjoy his own without infringing on the rights of another person, and that such internal rules shall cause and promote the welfare of society. Police power is vested in the several States under supervision of federal laws which grant no such power to the Federal Government.

PERSONAL (CIVIL) RIGHTS.

A right is a privilege vested in anyone by which he may do certain acts or possess certain things under protection of the law. A right may be either absolute or relative. An absolute right is a privilege vested in any one by which he may do certain acts or possess certain things independent of all others by excluding them. A relative right is a privilege vested in two or more persons by which they may do certain acts or possess certain things independent of all others by excluding them. Blackstone divided the laws of England into the Rights of Persons, the Rights of Things; Private Wrongs, and Public Wrongs. Rights commanded (Jura Personarum) include the rights of persons and the rights of things (Jura Rerum). Wrongs that are forbidden include private wrongs (civil injuries) and public wrongs (crimes and misdemeanors). Rights of persons concern the rights of men and may be either acquired or lost. Rights of things concern the acquired or lost right of an external object or thing not connected with the person of any one who may acquire or lose it. A private wrong (civil injury) is an infringement on a particular right of persons which concern individuals only who have an adequate remedy of redress by law or equity. A public wrong (crime or misdemeanor) is a breach of public rights which affects the whole community, with means by which it may be prevented or punished by law.

An absolute right is a privilege which belongs to any one individually, including the enjoyment of personal security, personal liberty and private property. Personal security includes the absolute right of and security from injury to life, limb, body, health and reputation. Personal liberty includes the absolute right to enjoy equality, corporate liberty, religious liberty, liberty of speech and liberty of a free press. Private property includes the absolute right to the possession, use and enjoyment of personal and real property independently of all others by excluding them.

A relative right is a privilege vested in two or more persons, excluding all others, in that they may enjoy domestic relations, corporation privileges and a constitutional frame of government. Domestic relations include the relative privilege of husband and wife, parent and child, master and servant, and guardian and ward. Corporation privileges include the relative right to create private, public and quasi-public corporations. The enjoyment of a constitutional frame of government includes both a Federal and a State Constitution.

Law enhances and regulates the rights of man by creating and protecting legal rights. By operation of the law, it is supposed to guarantee that all may enjoy equal rights, both absolute and relative, and to compel the performance of their personal duties. Duties and rights express similar facts viewed from an opposite standpoint in that a man is equally subject to both. Absolute rights are limited as expressed by the States and the Federal Bills of Rights, including a remedy for any violation. By law, persons are divided into natural persons and artificial persons. Natural persons are such as our God of Nature created, including men, women and children. Artificial persons are devised by human laws, the work of man and not an act of God. They are created for thet purpose of regulating government and society. They are called and known as corporations or bodies politic.

Digitized by Google

The principal object of artificial persons (human law) is to explain, enforce and protect our rights in respect to corporations. Civil liberty is secured by a government which keeps the law-making power in the hands of the people, with restraints imposed on legislators and other civil officers sufficient to check dominating wealth which is as injurious and oppressive as the most absolute monarchy. For enslavement of the masses, a certain class of appointed and elected officials are prone to exercise powers granted for personal purposes which are pecuniary and selfish, in place of using his influence for public welfare as the law directs.

Every right, whether legal or moral, implies the active or passive furtherance by others of the wishes of the party having that right. Where such furtherance is enforced by powers of a State, it is a legal duty. Where such furtherance is merely expected by public opinion of society, it is a moral duty. Jurisprudence is specifically concerned only with such rights as are recognized by law and as are enforced by this power of a State. That which gives validity to a legal duty and a legal right is in every case the force which is lent to the law by a State, and anything else may be the occasion but not the cause of its obligatory character.

The fundamental principles of human liberties and rights have been unfolded step by step in the revolutions and struggles waged by the masses against the savage tyranny of greed and selfishness by the classes. In our glorious Commonwealth of America, although we have borrowed from other countries all the great charters that have ever been enumerated, we have not as yet ceased to develop new duties and rights to meet human needs of the present. Superiority of man to any government is the gist of the Federal Constitution. Our civil, political and religious liberties have been enhanced by both the Federal and the States Bills of Rights of the Constitutions.

Unless enforced, the Federal and State Bills of Rights will not secure "equality before the law" to our citizens. It is a fact and but a very few realize that the Federal Bill of Rights, as set forth in the first eight amendments of our Constitution, seemingly do not protect a citizen in his "State rights" in that most of these amendments are held to apply only between the Federal Government and its citizens when a so-called Federal question arises. In consequence, it is left to the individual States to protect the citizens of that State by a State Bill of Rights.

Since the great object of law is to protect us in the enjoyment of our rights, and to punish those who violate those rights, it becomes a matter of vital importance to us that we should know what is a legal right and what are our legal rights. A "right" is the name given and applied to the advantage a man has when he is so circumstanced that a general feeling of approval results when he does or abstains from doing a certain act, and when other people act or forbear to act in accordance with his wishes; or, if a general feeling of disapproval results when any one prevents him from doing or abstain from doing at his pleasure, or when refusing to act according to his wishes. Holland defines a right as "one man's capacity of influencing the acts of another by means not of his own strength, but of the opinion or the force of society." Either of the above definitions explain a right under human law as distinguished from any natural right created by God.

In a state of natural liberty, every one is allowed to act according to his own inclinations when he does not transgress the limitations which are assigned to him by the law of nature. But, in a state of civil liberty, he is still allowed to act according to his own inclinations when he does not transgress the limitations assigned to him by the municipal or positive law. By municipal or positive law, some things may be prohibited which are not prohibited by the law of nature. But, under the law of a government that is wise and good, every citizen will gain more liberty than he will lose by the restrictions. He will gain more liberty by the limitation of other men's freedom than he will lose by the restrictions in which he is subjected.

Every human being can claim and has a right to justice from his fellow man. Like life and liberty, this can not be bought, bartered or sold as is the case with personal or real property. Justice is priceless and not transferable.

Digitized by Google

It is equal, impartial and ever abides even in the possession of the wasteful who scorn it and would sell justice for gold were the opportunity available, and if even in the possession of the man who has sold justice for gold when possible to do so.

Thus, the principal charms of life, liberty and nature include variety, diversity, inequality and injustice. The right of ownership to property, and to the pursuit of happiness and personal gains have secured for the masters of industry, through ignorance of the masses, a splendid reward of financial profit; while the right to labor and the pursuit of happiness by the laboring man includes his right to sell labor and time in any market for any price that he is forced to accept in that he may acquire three square meals a day and a place to sleep for himself and dependents. To deny this in America, is to dissolve society and throw our social outcasts into a state of anarchy if judging from the manner in which those with a pernicious or malicious aforethought have pictured it. But, judging from the manner in which our fair-minded American citizens have pictured justice, we have injustice in its crude form on every hand without any general or special denial of this fact unless by an ignorant man or a selfish man.

DOMESTIC RELATIONS.

Domestic relations are the relative personal rights which exist between husband and wife, parent and child, guardian and ward, and master and servant. The term "marriage" which covers the most important branch of domestic relations is a personal relation arising out of a civil contract in which consent of the parties capable of contracting is necessary. It may also be defined as the act of uniting one man and one woman for life as husband and wife, a legal relation which can be dissolved only by death or by operation of law. Some authors term "marriage" a contract by which one man and one woman reciprocally agree to cohabit during their joint lives as the law directs.

During the reign of Alfred the Great who succeeded the English throne in 871 A. D., under the influence of feudalism which hardened its slaves to the dangers and toils of war, and which fostered a patriotic spirit and bound them by local attachments, thus arose the institutions of Chivalry (knight's service) of England, giving rise to a beautiful domestic sentiment among the knights which naturally created courtesy, courage, generosity, loyalty, truthfulness and a marriage sentiment recognized as leading social principles and virtues. In consequence, no one was ashamed to be honest. Manners were softened and the rude feudal baron of the past was transformed into a gentleman by which the most beautiful relationship arose.

Distinguished glory of chivalry (knight's service) developed a love of God's teachings and a deep devotion to the female sex which was earnestly enjoined as a single right and duty. To insult a woman was of lasting disgrace. She scorned the attention of any man whose habits were dishonorable. By such precaution and earnest devotion, there was recorded but few desertions, separations or divorces during the Middle Ages. In this respect, conditions have changed some since our forefathers were boys, during the Dark Ages of Feudal History when the knights accepted for veneration the Mother of our Lord and uncovered bright spots from the hardships of the regnal services.

Although marriage is accompanied with a certain amount of religious ceremony, and sanctioned by God as being especially sacred both in its nature and in its requirements, but still it is considered by law as merely a civil contract which may be dissolved either by death or by operation of a man-made law. This condition and state of man has existed in all ages from the time of Adam and Eve, a condition ordained by our Creator who fashioned man and woman expressly for the enjoyment and society essential for mutual companionship. This divine plan has been prompted and supported by a natural instinct on the part of both man and woman for the social requirements of each other which should be considered as the highest state of existence promoted to the most polished condition of manhood and womanhood. Mankind was created to live in a state of matrimony by a solemnization of the marriage vow as practiced, sanctioned and protected by the moral and civil

Digitized by Google

laws of all civilized people since the earliest date of human existence. In consequence, domestic happiness, government, intelligence, morals, prograss and religion will all fall into a most certain and inevitable degeneracy and decay when the marriage state ceases to be recognized and respected, of which our conduct in society has already registered a certain degree.

Disregarding Adam and Eve, humanity has grown from the association of man and woman in wedlock, the supreme function of Father and Mother after having been united in marriage which, from a standpoint of social economy, has fixed paternity. There can be no more of a certain test of the character and stability of society than a man's and woman's place in that society. And proportionately as the domestic bonds of that society become weak, to that extent society becomes weak, disorderly and unstaple, whereby property and inheritance are insecure and posterity is crippled.

In ancient times, the family was regarded as inextinguishable. They were much like our present financial corporations which are immortal and have the power of perpetual succession. The resolution of Abraham to sacrifice his son to God was not shocking to a legal sense of the age in which he lived. Likewise, under the old Roman law, the paternal power knew no limits within the range of private law, but it did not extend into the range of public law. In the domestic forum, the will of the father was law. A son could own property exempt from his father's control of which his exemption included any property that the son might acquire as a reward for public official service such as military pay which was held by the son as free from paternal control.

A contract of marriage differs from an ordinary contract in that it is indissoluble by the contracting parties. Secondly, because it creates a status rather than a contract which attends and follows the two parties to the obligation through life, and enjoins certain burdens and privileges toward each other, toward their offspring and towards the world at large which can never be fully performed as long as the parties live, nor can it be shunned or avoided unless by operation of law. It differs also in that death of either party surrenders the contract of marriage while in many other kinds of contracts death does not terminate the obligation.

The term "marriage" furnishes a working basis for the study of "domestic relation" as it creates the relative rights of husband and wife, and a possibility of relative rights between parent and child, guardian and ward, and master and servant.

PARTNERSHIP.

A partnership is a legal relation existing between two or more persons in which they agree to unite their property, labor and skill for the transaction of a lawful business and for the purpose of sharing the profits and losses equally. It may also be defined as a legal relation based upon an express or implied contract of two or more competent parties and existing for the purpose of uniting their property, labor and skill in carrying on some lawful business for joint profits and to share the losses equally. Persons so united are called partners. The term "co-partnership" is sometimes used to designate a partnership relation, and the term "co-partners" to designate the parties of a co-partnership.

This branch of law is of ancient origin, it being a compound of Roman Civil Law, Common Law and the Law-Merchant. Under the Roman Civil Law, a partnership was established by confidence and was independent of any contract provisions of the law. The partners, united by a tie of blood, were mutual trustees in the business who shared the profits in proportion to the contribution each made to a common partnership fund. During time of the Middle Ages, when trade was carried on under great difficulties, the law of partnership assumed its modern form.

Thus, partnerships were recognized as contractual relations. Partners were confined to members of the same family which perpetuated the Roman Law principle of its being a confidential relation and negative to the doctrine of consideration in that it held the controlling element of contractual rela-

Digitized by Google

tions. Under the Law-Merchant rule, a partner had the power to buy, exchange, sell or make any contract in course of trade. The Common Law rule, which recognized joint ownership without permitting a joint owner to mortgage or sell his co-partner's share, found it wise to incorporate the Law-Merchant rules whereby we have the special rules applicable to joint owners who are partners.

A partnership agreement, like all other contracts, is invalidated by compulsion, deception, duress, fraud or undue influence. When valid, it must include competent parties and be of a consideration either oral or written unless the Statute of Fraud requires that the contract must be in writing, which is often the case. Though the parties deny an intent to create a partnership relation, they are bound as such if the legal effect of their acts and agreements constitute a partnership relation. An expression of their intention is not so influential as the legal effect created by their conduct and words. Their real intentio nis determined by having ascertained whether the relationship which they have assumed possesses the incidents of a partnership or of some other relation.

The term "partnership" or "co-partnership" need not be used by the parties in that their intentions may be determined from effect of the entire agreement regardless of any special expressions. Thus, when an agreement or contract bears all the distinction of being a partnership relation by having included the use of capital and labor in a particular enterprise under the same management and owned jointly—each having the rights of a proprietor or partner in conduct of the business and in the sharing of profits and losses, such an agreement or contract constitutes a partnership at law. But, a mere sharing of the profits does not necessarily create and constitute a partnership in that a party may receive profits as an agent, creditor or servant, although not be a co-partner.

A party cannot be introduced into a partnership relation without consent of all the partners. Such consent may be express or implied by having permitted a party to assume the position and duties of a partner. Whether a party is a partner depends upon the nature of his interests in the profits which include the gross proceeds of the business. Thus, the question involved does not determine whether a man shares in the gross or net proceeds, but it should determine the nature of his interest and income in either of the above mentioned funds.

Each partner in a general partnership is individually liable for any indebtedness of the firm in whatever manner it may arise, regardless of whether the other partners are able to contribute or not, and without regard to the proportion of interest the partners may have in the firm. A partner represents his co-partner, consequently a judgment against him entitles the creditors to seize and sell firm property if the judgment issues from the firm's liability. Likewise, a judgment against a partnership may be satisfied out of the private property of one or more of the partners without regard to partnership property assembled for conducting the business. This rule varies in the several States.

Partners are not entitled to compensation for services rendered to the firm other than his share of the profits unless an agreement to that effect is expressed or implied in a partnership contract or agreed to between the parties. Partners may stipulate that a retiring partner shall be made secure against loss by the continuing firm. Any agreement between the partners, as to existing debts, does not affect third persons who are the firm's creditors unless they consent to such an agreement and agree to look to the continuing partners for any consideration due.

Action at law by a partner against the firm, or by the firm against a partner can not be taken before dissolution of the partnership, and such a claim must be adjusted in equity. When all partnership business has been settled, such a suit at law may be brought. But partners may sue each other, if regarding a matter unconnected with the firm, as freely as any one else can sue. When a sheriff, under a separate execution against one of several partners, levies upon and sells the defendant's interest he cannot deliver posses-

Digitized by Google

sion of the property sold to the purchaser because he has only acquired a right to an accounting as the execution covers the partner's interest of the business and not the chattels incumbered by a joint indebtedness.

If interested as a partner, a minor has all the rights and powers of all other member of the firm. He is liable for debts of the firm. His contribution may not be recovered from the firm unless he has been influenced to enter the business through fraud. A contribution means that, when two or more persons are jointly liable as partners and one has been compelled to pay an entire indebtedness, the others are legally bound to pay him for any loss incurred by the payment of their shares. At the age of majority, a minor may ratify his partnership transaction and bind himself by obligations incurred during his minority.

An administrator or executor cannot make the estate of a deceased a partnership interest, nor can any one who has an inherent right to the estate of a deceased succeed him as a partner. The purchase of a partner's interest does not make the purchaser a partner without full consent of the other partners in that the relation is one of confidence which requires the utmost good faith between co-partners. A partnership interest in the name of a deceased partner goes to the heirs in trust until after settlement of the partnership debts if any, and equity compels conveyance of a legal title to the business partner or partners for a dissolution and settlement of the firm's business. When real estate forms any part of partnership property, it is to be treated as such, but, under equitable conversion, the firm may consider it as personal property in equity to meet any obligations of the partnership and close up the business. Thereafter, by equitable conversion, it may be considered as real estate.

CORPORATIONS.

A corporation is an association of natural persons authorized by law to transact business as a single artificial person. Chief Justice Marshall defines a corporation as "an artificial being; invisible, intangible and existing only in contemplation of the law." Code law defines it as "a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes."

Or, a corporation may be defined as "an artificial person created by statute and vested with certain franchises." Although, historically speaking, there are many corporations not created by statute in that they exist by prescription or from time immemorial. A body politic, like the United States of America, the people of New York state or the county of New York may be considered as artificial persons with a capacity to sue and be sued. They are immemorial and inextinguishable, having other characteristics of a municipal corporation. Too much emphasis has been given to the personality of a corporation by urging that it is much like a contract in that while a body politic may be properly conceived as having been created by a contract, but still a contract cannot be regarded as having rights such as the ownership of property or such as being a party to an action which are rights allowed corporations.

As to their object and origin, corporations are either ecclesiastical or religious. Religious corporations were later denominated as civil and eleemosynary. An ecclesiastical corporation is one which is composed of religious persons and under spiritual jurisdiction or under the control of church authorities. A lay corporation is defined as any one other than an ecclesiastical corporation. Lay corporations were organized for various worldly purposes and were later divided into eleemosynary (charitable) and civil corporations. An eleemosynary corporation is one created to distribute the charity of its founders. Civil corporations include all lay corporations other than charitable (eleemosynary) corporations which were created for any other lay purposes.

As to membership, a corporation is either aggregate or sole. An aggregate corporation consists of two or more natural persons who are authorized by law to transact business as a single artificial person. A sole corporation consists of one natural person and his successors, authorized by law to transact business as a single artificial person, as by a bishop or a sovereignty.

Digitized by Google

Aggregate corporations include public, quasi, quasi-public and private corporations. A public corporation is one created for the government of a portion of a state, such as for a municipality or an incorporated city, village or borough. Quasi corporations include counties, townships, school districts, boards of supervisors, school trustees or any other body created for public purposes and governed solely by the state in which it is incorporated. A quasi-public corporation is a private corporation organized for public purposes, such as railroad, gas, electric, telephone, telegraph and express companies, or any other utility corporation created by private individuals to serve the public in exchange for pecuniary interests. A private corporation is any one created by private individuals for pecuniary or non-pecuniary purposes.

The history of Anglo-Saxon law contains nothing more striking than the wonderful development credited in later years for the subject of corporations. Of this branch, a brief chapter was all that Blackstone required to outline a full exposition of the corporation laws of England over one hundred and fifty years ago. At the present writing, many volumes, digests, series of law reports and legal periodicals are devoted exclusively to corporation laws. The subject of municipal corporations alone has assumed enormous proportions.

By considering early history of the human race, we find that primitive man was a creature of his surroundings while roaming from place to place as his wild nature prompted him. And as experience arose from time to time which adapted him to the conditions confronting him by the employment of means for his protection and welfare as was available with a development of the tribe, the family and the community, we have found a development of customs gradually merging into a system of law which has encouraged the idea that the highest degree of justice capable of being extended to all the people of a community with the highest degree of individual liberty rests forcibly upon an application of principles of a recognized law supported by an agency having authority and power to administer this self-imposed law.

In consequence, we find that the people who reside within the limits of a state constitute a public political body organized for the purpose of self government. Powers of a government are distributed by the organic law among the three departments which take their names from the nature of the powers delegated to each which are as follows: Legislative, executive and judicial. Organic law is the constitution of a government and is altogether written. For the enforcement of these three departments of power with the least trouble and expense, it has been found advisable to subdivide a state and to place the people who reside within the borders of these subdivisions into corporations and charge them with the handling of certain state functions.

Charters may be imposed on the inhabitants of a city as created by will of the legislature, although the acceptance of such a charter is often times submitted to a vote of the electors of the incorporated city. Municipal indebtedness is generally limited to an amount not to exceed one-tenth of the taxable real estate of the city. When borrowing money, or in making a contract, municipal authorities should not exceed their lawful powers. The payment of a municipal indebtedness can be enforced by a writ of mandamus which should direct the levy of a tax to lift the debt. Municipal corporations have existed from time immemorial.

Under the Roman law, three persons were required to constitute a corporation. The English law recognizes a corporation sole of but one person. In theory, the king is a corporation sole; his royal dignity being inextinguishable and passes to the heir immediately upon the death of his predecessor. In Massachusetts, the supervisor of a town has been regarded as a corporation sole; also the parson of a country parish as respecting the land belonging to the parish church. At present, all American corporations are considered aggregate. With us, colleges and universities are civil corporations. English law regards them as eleemosynary in that the universities of Cambridge and Oxford were formed to encourage learning and veneration with a love of God of which the students were expected to say their prayers first and then devote the remaining time to study.

Digitized by Google

Whenever any industrial enterprise is planned in the way of transportation conveniences, manufacturing, or in the promotion of any other commercial enterprise, running expenses are generally assumed by the public by the creation of a corporation which makes it far more convenient for its promoters who reap financial profits by having the stockholders bear the burden of any losses incurred. However, a corporation allows the aggregation of small capital which otherwise would be insufficient if used individually for a large enterprise, but if used cumulatively such an interest can be handled to a better advantage. Furthermore, a corporation presents the attractive feature of a limited liability on the part of a stockholder in that he is not supposed to lose more than he has actually invested in an effort to win a profit. This redeeming feature does away with and obviates the utter ruin which would overwhelm any one whose entire capital might be invested in some other hazardous venture.

A corporation further provides an excellent opening in which to invest the savings of any one who is unwilling or unable to devote time and energy in the task of superintending the employment of his capital other than the time and energy required to be separated from his money in an effort to reap a profit. And, in the theory of law, a corporation is perpetual because the capital invested is not subject to the many alterations and mutual successions experienced by the estate of a private individual in case of sudden death.

Congress of the United States can create a corporation. It has chartered railroad companies, United States banks and many useful institutions known as national banking corporations. A national bank may be incorporated by filing articles of incorporation in the office of the Controller of Currency, Washington, D. C., if all requirements of the law are fulfilled. The New York University presents a few unique features of corporation law in that it has a visitation power and superintends all incorporated colleges, schools and academies in the state. This is an example of a simple corporation having the power to create other corporations.

In progress of society, it is not sufficient only to accord rights to and impose duties upon individuals because the necessity to combine and co-operate for the advancement of commerce, industry, public service and social intercourse leads to the development of artificial legal combinations which find expressions in such artificial persons as our incorporated colleges, clubs, associations, universities and other like corporations. Civilized countries have found it necessary to confer certain powers and privileges upon these artificial persons which are formed by an aggregation of natural persons. An artificial person is the work of man, and a natural person is the work of God. Artificial persons are endowed with privileges and rights other than the privileges and rights allowed a natural person, and are by law endowed with certain inherent rights not possessed by natural persons as in cases of immortality and perpetual existence.

Directors of a corporation are elected by the stockholders. Ownership of shares in a corporation created for profit allows the stockholder a right to vote. A member of a non-pecuniary corporation is offered the same privilege. The right to vote by proxy is not recognized by common law but is usually allowed by statute. The officers, and the directors who elect them have entire charge of the affairs of a corporation. As a general rule, the liability of a stockholder is limited to the amount of his subscription, although this is not the law of some states. In the state of Minnesota, it used to be that a stockholder was held liable for double the amount of his subscription. Such a law seems unjust. As a rule, if a subscription is not entirely paid in, the stockholder is liable for the unpaid balance. Liability of a stockholder in a United States bank is double the amount subscribed.

Ultra vires acts are the acts done by a corporation which are beyond its power as defined by their charter and the law. Some acts ultra vires are not always illegal although, in general, a contract made by a corporation which is entirely foreign to the purpose of its creation is void for want of power. In consequence, a contract made by a corporation in violation of a statute of

Digitized by Google

public policy is illegal and void. Thus, corporations cannot take advantage of their own wrongs by urging such a defense. In some states, the ultra vires doctrine has not been vigorously asserted by the courts for some time.

Corporate securities include stocks and bonds. Stock which represents undivided shares in the entire property of the corporation, including personal and real property, is subject to sharp fluctuations. The value of shares may rise through an economical administration and a wave of prosperity, or it may decline through accident, disaster, mismanagement or by a legal judgment which enforces debts and other outstanding claims. While bonds are relatively staple, subject only to a slight fluctuation, the bondholder does not share in any unusual condition which may visit the corporation. If a ten or twenty year bond bears a lawful rate of interest and is made payable in gold coin, it represents a fairly safe investment.

Corporate property and franchises may be mortgaged to secure the payment of bonds, and held in trust by a bank or trust company for the benefit of those who may at any time become stockholders. Secured conditions of this nature create activity in negotiability and makes the bonds readily marketable without having to disturb the relation of mortgagor and mortgagee. The mortgage may be enforced by a foreclosure in event the principal or interest of the bond is not paid at maturity.

PERSONAL PROPERTY.

Ownership is the right of one or more persons to possess, use and enjoy a thing excluding all others. The thing owned is called "property." It is the rightful dominion of man over external objects and includes all objects, things and rights, movable and immovable, coporeal and incoporeal, tangible and intangible, visible and invisible which are capable of legal ownership. Personal property is anything temporary and movable that is not attached to real property. Real property includes lands; that which is affixed to lands; that which is appurtenant or incidental to lands, and that which is immovable by law.

Personal property is older than real property. The stone hatchet and the rude canoe were considered personal property of the owner long before any one attempted to appropriate land to his exclusive use. However, personal property long remained of minor importance. Until a new century had reached a comparitively high stage of commercial development, the only kind of personal property of any particular importance were weapons and domestic animals. Legal principles for the regulation of these personal effects are few and simple. In early days, the weapon regulated ownership. The ownership and law of real property developed with vital importance as soon as the ownership of this kind of property was recognized. Economic developments of every race represent a long period of miscellaneous changes. As in every locality, population tends rapidly to outstrip the supply of available land. In consequence, the laws of ownership which govern real property possessions have become of the most vital importance.

The term "property" embraces all objects, rights and things, movable and immovable, coporeal and incoporeal which are subject to legal ownership. Ownership of a thing consists of the positive right offered to the owner by law to a disposition of that particular thing owned as he may choose, and to the negative right to exclude all others from interfering with the thing he owns in his exercise of a dominion over it and its use.

All property is divided into personal property and real property. Real property consists of freehold estates in land. Any interest therein which is of an uncertain duration, excepting an estate at will, and which may endure for life is called real property. Personal property embraces all objects and rights which are capable of ownership with the exception of freehold estates in land and any incoporeal hereditaments issuing therefrom. The term "chattel" is synonymous with the term "personal property" and embraces all property other than a freehold estate.

Personal property is subdivided into chattels real and chattels personal. A

Digitized by Google

chattel real is any estate in land less and other than a freehold estate. Freehold estates include estates for life and estates of inheritance. The principal kind of chattels real is the leasehold estate. A chattel real is an estate of which its duration is determined when the estate itself is created. A chattel interest is an estate at will as in the case of a tenant from month to month. Personal property other than chattels real or chattels interest are chattels personal. The term includes animals, money, furniture, vegetables, patents, copyrights, etc., either chattels animate, chattels inanimate, chattels vegetable, or choses in action. The term "goods and chattels" includes the whole personal estate both choses in action and in possession. Personal things are either choses in action or things in actual possession.

A choses in action is not actual possession but merely a right to claim the thing in question of which its actual possession may be recovered by an action at law. The thing so recovered is called a "choses in action." It includes all kinds of personal property except chattels real, chattels interest and choses in possession. "Choses in action" is a right to sue on a debt, a right to recover damages, to recover a patent, to recover shares in a corporation, etc. A "choses in possession" is a thing of which the owner may take coporeal (bodily possession), the whole of which may be seen or felt. In other words, it means the right to and actual possession of a thing.

The term "fixtures" has been abused with various meanings by textwriters and the courts. It is sometimes used to designate a chattel which is annexed to a freehold (real property) in such a manner as to have become part of it in that no right to a removal can be claimed by the person who annexed it when a question to the right of possession arises, or when the occupancy passes to another. This should explain the primary meaning of the word as a real fixture although the term "fixtures" as understood today is used to designate a chattel which, though annexed to a freehold, can be removed.

Growing crops stand like fixtures if drawing a distinction between personal and real property although taking the nature of both to a certain extent until reduced to emblements or personal property by having been severed from the soil. By law, products of the soil are divided into two classes as follows: Fructus industriales and fructus naturales. "Fructus industriales" are fruits or products of the earth which are obtained by human industry as understood by the annual or periodical labor of man by his sowing, planting, cultivating, reaping and gathering oats, wheat corn, rye, barley, alfalfa, clover, timothy, potatoes, fruits or any other crop demanding an annual output. "Fructus naturales" are products of the soil and the offspring of labor which includes not only the natural and spontaneous (voluntary) growth of the soil but also anything growing which, although planted in the first instance, does not require annual labor for its care and attention, such as trees, wild grass, etc. Fructus naturales are regarded as a part of the land therefore may be termed real property, while fructus industriales are generally considered personal property. According to the fourth section of the old English Statute of Frauds, which was enacted in the twenty-ninth year of the reign of King Charles II, a sale of growing crops is not a sale of the land upon which it stands although, unless reserved, growing crops pass with the sale of land.

REAL PROPERTY.

Ownership is the right one or more parties have to possess, use and enjoy a thing excluding all others. The thing owned is called property. It may be either personal property or real property, or both. The term "property" means the rightful dominion of man over external objects. It includes all objects, things and rights, movable and imovable, coporeal and incoporeal, tangible and intangible, visible and invisible which are capable of legal ownership.

Blackstone has defined "real property" as those things which are by their nature permanent and immovable, such as land and profitable rights connected with and arising out of them, and capable of being enjoyed in perpetuity. Real property consists of lands, tenements and hereditaments; immovable,

Digitized by Google

visible, tangible, coporeal, and carries with it everything on, above and below the surface including houses, trees, fences, minerals, growing crops and like elements. Briefly speaking, real property consists of land, appurtenances, that which is affixed to land, and things immovable by law.

Feudalism, the first step in the acquisition of real property, was established by the Goths and Vendals when they migrated from northern Europe, subdued Rome and divided properties to the king's followers of which real property was alloted in large parcels to the soldiers. These allotments were called feuds, fiefs or fees. Most historians claim that William, the Conqueror, subsequently brought this system into England in the year 1066, while others contend that he only brought European feudalism and dominated the English feudal system already established and peculiar to the island.

From this order of things, under the comrades of the king's thegns, developed within itself the germ of feudalism. From the new English king, after the battle of Doerham which completed the conquest of England, arose the new order of English nobles. From the new order of English nobles, arose the king's thegns which were his body guards to whom the king gave horses, arms and a seat in his meed hall for which, in turn and as allegiance, the thegn comrade was bound to follow and fight for his lord. The king's thegns were exempt from general jurisdiction of the hundred court, more commonly known as the Shire Court, it having been a part of the thegn's meed that he should be judged only by the lord whom he served. Grants of land to the king's thegns made him a local nobility, bound to his king only by the personal tie of allegiance. He was not subject to actual services in the king's household.

Under the feudal system, all property rights were vested in the king. Below him were the military officers (nobles) to whom the lands were alloted. Each noble, as the king's tenant, had his allotment subdivided into smaller parcels and apportioned to his subordinates. The subdivisions were again and again subdivided to those who actually cultivated the soil. Personal property was of little importance and not brought under this system. Under the feudal system, the tenant in capita, a tiller of the soil, held the same relation with the military officers (nobles) as the military officers held with the king.

As formerly mentioned, feudalism took its rise among the German tribes. It grew rapidly in France, then called Gaul, having been brought there by the conquering Franks. During these continental changes of feudalism in European countries, a similar system was spreading on the English Isles which dates back to the English Celtic period, 55 B. C., the beginning of the Roman conquest in England, a time of ancient history prior to the middle ages. History divides the middle ages into two periods, viz: From the dissolution of the Roman Empire, 395 A. D., to the crowning of Charlemagne, 800 A. D. And, from the crowning of Charlemagne to dissolution of the feudal system, 1500 A. D. During the first period, 395 A. D. to 800 A. D., which was darkest of the Dark Ages (middle ages), art, science, literature and civilization were totally eclipsed. Libraries were burned, cities were leveled to the ground, and records perished. Nothing was sacred. All good men hid themselves in houses of worship while barbarism dominated.

During the first period of the middle ages, insufficiency of the allodial tenure system gave rise to the birth of feudal tenure. The allodial tenant held land as his own but subject to confiscation by robbers, and subject to dispossession by a more powerful neighbor. As terror of the allodial tenure period increased, the poor classes were compelled to place their lands into the hands of some powerful chief or king, subject to his protection, which developed the feudal tenure system of England, original and peculiar to the island.

Thus, at the close of the first period of the middle ages, feudalism rose from the wreck of private property when man knew no superior but God and his more powerful neighbor. The feudal system grew from needs of the times, it being the elementary principle of protection by some powerful chieftain or king which developed a more peaceful state of society. A feudal tenant could cultivate his soil although exacted to give a portion of the profits to his lord or chief; to render service to him in war, and render services in

Digitized by Google

protection of the lord's castle and family. There were no standing armies. Quarrels were frequent. Tenants were not compelled to and rarely traveled. Thus grew an attachment for the soil, a love of home and loyalty to his master. In consequence, the tenants became earnest and stalwart warriors and yeomen with a firm foundation for Christianity and civilization.

In 395 A. D., with an eclipse of the old Roman Empire, Europe and England were both obliged to begin anew. During allodial tenure, everything was political anarchy under a reign of bloody nobles all of which kept society in darkness for a thousand years, a period commonly known as the darkness of the Middle Ages. Simultaneously, Europe and England were under allodial tenure control until the year 800 A. D. when the rise of the feudal tenure system took place which completely vanished after about the fifteenth century.

In Europe, upon the death of Charlemagne, in the year 814 A. D., the great empire was confiscated and divided among his three sons, and later being divided among petty sovereigns called Earls, Dukes, Counts and Barons who independently administered justice and preserved order. Each ruled by hereditary rights, and his estate descended to his eldest son. His revenues were derived by an exaction imposed on the feudal tenant who cultivated the chieftain's lands in different ways.

In England, the real blow was given to the feudal system during the reign of Charles II, who succeeded the throne in 1660, when feudalism was abolished by knights service which reduced the system to free and common socage, this meaning a tenure which stipulated services other than military services. Thus, the grants given by the English king to our American colonists simply recognized the doctrine of fidelity and freedom.

After the feudal period, disputes over the rights of possession caused the disputes between lands and chattels to become apparent. Real property actions and personal property actions came into use which distinguished lands, tenements and hereditaments as real property, and goods, wares and merchandise as personal property. The real property laws of America have but few changes from the old English real property law system brought here by our forefathers during colonial times, of which the changes are principally statutory. By the old English statute, everything on, above and below the earth's surface was considered real property, excepting gold and silver which was claimed by the crown.

The surface of the earth and all things above, upon and below it, whether animal, mineral or vegetable; and whether artificial or natural, may form the subject of real property ownership. Ownership in its strict sense is that exclusive right which (at law or in equity, or both at law and equity) the jurisdiction of a court creates in favor of some particular person or persons in regard to a particular thing. The words "personal property" or "real property" are used to designate the things themselves. The right to possess, use and enjoy these things is called "ownership."

Things real are those which are permanent and immovable. Things real consists of lands and other tenements. The word "land" includes the surface and substance of the earth. Real property includes land and everything which is permanently fixed to the ground or incidental thereto whether above, upon or under it, such as water, woods, houses, standing grasses and grains, fences, mines and other like material things. The word "tenement," though popularly applied to buildings only—yet in its legal significance, includes everything of a permanent and immovable nature which may be holden whether it be substantial or of an unsubstantial nature.

Things real are usually and conveniently designated by the comprehensive term "hereditaments" which includes all things real and comprises some things personal for it includes everything capable of being inherited such as a material object or a condition of which its benefit may descend to a man from his ancestor, or an annuity in fee as distinguished from a rental charge. A thing, whether real or personal, may be a hereditament although held as a chattel interest or as an interest of freehold not of inheritance when that in-

Digitized by Google

terest has been carved from an estate of inheritance. In consequence, leasehold parcels are hereditaments. And an annuity for years, if carved from an annuity in fee, is also a hereditament.

Occasionally, that which is real property at law is treated as personal property in equity. For example: Real estate purchased and held for the purpose of a partnership interest as a portion of the stock in trade is considered in equity, although not so at law, as a personal estate to all intent and purpose (whatever may be the form of conveyance) subject to all the equitable rights and liabilities of the partners and their creditors in that they may pass to the personal representatives and distributees upon the death of a partner unless there is a clear and determinate expression of the deceased partner that it shall go to heirs at law. On the other hand, an interest in personal property at law is sometimes treated as real estate in equity.

WILLS AND ADMINISTRATION. "SUCCESSION AFTER DEATH."

A will is a lawful disposition of property made by the owner before his death. It is the declaration of a man's intentions concerning the disposition of his property after his death. Gardner defines a will as, an expression in a manner sanctioned by law of that which one may legally require to be done after his death. Administration is the legal disposition of the property of a deceased. An executor is any one who has been mentioned in a will to represent the deceased in the disposition of his estate. An administrator is any one who has been appointed by a court for the same purpose when an executor has not been mentioned in the will, or when the one who has been mentioned in the will as executor is incompetent or refuses to act as such. Succession is the coming in of another to take the property of one who has died intestate.

Historically speaking, there was neither personal or real property in the hands of people during ancient times. In consequence, there could be no wills made because the people were only given the right to use the soil and not a right of ownership. Wills are of a very ancient origin, having been well known to the Greeks and Romans. For both personal and real property, they were very common at the time of the Norman conquest, during the reign of William, the Norman Conqueror, who succeeded the English throne in the year 1066 A. D.

Prior to the introduction of feudalism which took its rise after the dispensation of allodial tenure about 800 A. D., the Anglo-Saxon law allowed owners the right to will both personal and real property. But after the feudal system was introduced, which advanced the theory that all lands should belong to the king and leased or rented to the tenants by him, this naturally put an end to the disposition of land by wills. In 1536, the Statute of Uses was enacted. And, in 1540, the first form of the Statute of Wills was passed by Parliament which exercised its new provisions during the reign of Queen Victoria. These two acts were designed to remove restrictions held on the devise of land at common law.

From 1649 to 1660, during th Commonwealth of England under Cromwell, the feudal theory was disregarded and nearly all the land came to be held by possessors in fee simple. And the new provisions of the Statute of Wills, passed in the year 1837, during the reign of Queen Victory, gave the testator unlimited power to dispose of his personal property by will also. But still the right of testamentary disposition in some form is said to be simultaneous with the ownership of property. That is, the right of testamentary disposition, existed so close upon the origin and right of ownership as not to be essentially separated in point of antiquity. The term "testament" has reference to a will of personal property.

Blackstone explained that testaments were in use among the ancient Hebrews, and that instances of testamentary dispositions have been recorded in the book of Genesis. In Greece, wills were introduced by Solon. Among the Romans, the mode of conveying property by testament was known before the art of letters. In England, the right to bequeath personal property has

Digitized by Google

always existed. In early times, this right was abridged until eventually all restraints upon testamentary disposition of personal property was removed.

In the United States, each state has its own Statute of Wills. It is a rule in most of the states that any one of a sound mind may dispose of his personal and real property by a will duly executed with the prescribed formalities and without any restrictions other than as specified by statute. The old English Statute of Frauds and Perjuries, enacted in the twenty-ninth year of Charles II, who succeeded the throne in 1660, which directs that all devises shall be in writing with a signature of the testator and subscribed in his presence by a stated number of capable witnesses, is the foundation of American legislation on the subject of wills, a most important branch of our law.

A will may be revoked by being burned, cancelled, obliterated, torn or destroyed intentionally by the testator himself or by any other person under his direction. Such acts of destruction must be done when the testator is of a sound disposing mind and memory, and not the victim of duress, menace, fraud or undue influence. Or a will may be revoked by the execution of another will in writing which specifies that all prior wills are revoked. A prior will is not revoked by the cancellation of a second will unless it so specifies and the intention appears clearly.

The will of an unmarried woman is revoked by a subsequent marriage. But if a married woman makes her will, then becomes a widow and later marries again, then dies, her will is valid on account of its not having been made by an unmarried woman. If a will makes provisions for an unborn child, birth of the child will not invalidate the will. If a will makes no provisions for an unborn child, the child may inherit what the law of succession after death provides. A devisee or legatee may be a witness to a will but such a devise or legacy is void unless the will has been subscribed by the required number of witnesses not including the signature of the devisee or legatee who subscribed as a witness also.

A will may be contested and set aside by the court on account of an insufficient execution, fraud, undue influence or testamentary incapacity. To be of sound mind, the testator should be able to remember his family and those who are the natural devisees or legatees of his testamentary disposition, and be able to comprehend the nature and amount of his estate with reasonable accuracy. His belief in spirits, spooks, witches, fanatic and fantastic opinions in general, or any other irregularity of the mind which does not influence his testamentary efficiency and acts is not sufficient to invalidate his will. But an insane delusion which influences a testamentary act may render it void. Under the Roman law, if a father failed to mention his son in the will, the testator was deemed insane and the will could be set aside. Hence, that groundless error arose in England to the effect that common law required the father, who resolved on disinheriting his child, to cut him off with a shilling or some other small amount in that he had remembered the child in his will.

Executors are clothed with authority given by a probate or surrogate court which is termed letters testamentary. Administrators secure similar judicial authority given under bond for security which is termed letters of administration. An executor sometimes has a power of sale given by a will which authorizes him to convey real estate. An administrator has no authority to dispose of real estate except by virtue of an order issued by the court whenever the personal property is insufficient to pay the decedents debts. In general, the duties of an executor are the same as those of an administrator. He must bury the deceased, prove the will, invoice the estate, collect chattels, sell perishable goods, pay the decedent's debts, pay legacies, etc.

If an administrator dies, pending the execution of his trust, the court appoints a successor known as an "Administrator de bonis non." If an executor dies, pending the execution of his trust, his successor is appointed by the court and known as an "administrator de bonis non cum testamento annexo." Any one who tampers with an estate by assuming an administration thereof without legal authority is called an "administrator de son tort."

Digitized by Google

At common law, when a creditor appointed a debtor as his executor of the will it operated as a release of the debt.

Aliens, convicted felons, the insane and infants cannot serve as executors. As a testator can not determine the time of his death, he may appoint a minor as his executor. When a testator dies, if the minor whom he appointed is then of age, he may take the oath at once and enter upon the discharge of his duties. But if not of age, he must wait until he has attained the age of majority. An executor can not make a disposition of property until after having received his letters testamentary except for the payment of funeral expenses or to defray any expenses necessary for preservation of the estate. In some states, funeral expenses include the cost of a headstone for the deceased, and mourning apparel for the decedent's family. In fact, the laws of succession after death in the different states are not uniform. Such is the case in all branches of our laws of the states. In consequence, we are greatly in need of uniform laws.

NEGOTIABLE INSTRUMENTS.

A negotiable instrument is a written promise or request for the payment of a certain sum of money which must include the negotiable words "to order" or "to bearer." The negotiable words are sometimes called "the indicia of negotiability." Negotiable instruments are generally classified as follows: Bills of exchange, bonds, bank notes, checks, certificates of deposit, notes, promissory notes, and warehouse receipts.

Historically speaking, bills of exchange (the first form of negotiable instruments) were used in the time of Cicero by the Romans but they did not possess the negotiable characteristics of our bills of exchange. Similar bills of exchange were made use of by the Venetians prior to the year 1272 A. D., their origin being ascribed to the Jews who were banished from different countries for having accumulated illegal profit by the lending of money which enabled them to draw and exchange their wealth into those countries where they were permitted to reside. The Florentines and Lombards are also given the credit of having invented bills of exchange, it being stated that they were employed by King John as early as the year 1202 A. D., to remit money to his agents in Rome.

Inland bills of exchange were of later origin, first being used in England during the reign of King Charles II, who succeeded the throne in 1660. Promissory notes, though possibly used as evidences of obligations to pay money at an earlier date than just mentioned, were not recognized as negotiable instruments by the courts until inland bills of exchange began to be used, then being confounded with inland bills of exchange. By the Statutes of Anne, which were enacted during the reign of Queen Anne who succeeded the throne in 1702, promissory notes were declared negotiable in England the same as bills of exchange. These Statutes of Anne, which were a declaratory portion of the common law during the year 1705 and thereafter, established the negotiability of promissory notes notwithstanding that the true historical source of their negotiability rests within the "Law Merchant."

The term "Law Merchant" means a body of rules and usages relating to trade which grew among merchants and were adopted into the common law by the courts. Originally, it distinguished the contracts of foreign merchants from the contracts of ordinary common law according to usages of trade and not according to the usages and customs of ordinary common law. This custom of regulating the dealings between native and foreign merchants was extended to dealings between native merchants, being confined to the parties who were merchants as a distinct class from those pursuing other vocations. It was not until the seventeenth century that the courts declared that "the law of the merchants was the law of the land with a custom good enough for any one without naming him as a merchant."

Among the many customs of the merchants which were especially the subject of judicial interpretation, the two most important were those relating to

Digitized by Google

the instruments which were being used for the remittance of money from place to place, and the other by which credit was used as a means of adjusting an indebtedness. These instruments now bear the names of "Bills of Exchange" and "Notes." At the present writing, their value has no comparison whatever with their value when human life among bandits of the past never stood in the way of having carried out their purpose of highway robbery when the actual transfer of money was a dangerous undertaking. But, with negotiable instruments, credit was given and business was transacted without an actual transfer of money whereby their use at the present has rendered them almost indispensible.

Law divides commercial papers into two classes as follows: Negotiable instruments and non-negotiable instruments. Negotiability is not necessary to the form or substance of a bill of exchange or a promissory note. Non-negotiable instruments are nothing more than evidence of an indebtedness by which in a transfer the law treats them generally as ordinary choses in action subject to the general rules of assignments which protect parties who take them as a circulating medium.

At present, the law of commercial papers is tending rapidly toward a uniform expression through the great mercantile states and the foreign nations. The bills of exchange law as enacted in Germany, nearly a century old, prevails not only in the German Empire but in Austria and other countries as well. The old English law of commercial papers, nearly half a century old, has been enacted in about fifty of the self-governing dependencies of the English crown.

In the United States, the law of negotiable instruments has experienced an interesting history in an effort to shape a uniform law to govern commercial papers in all of the states in the Union. In fact, this is equally so at the present writing although not authoritively announced everywhere for it contains little positive introduction except when necessary to work out a proper assimilation. New species of mercantile papers appear from time to time, the character of which as negotiable instruments is acknowledged by the courts whenever so recognized by the banker and the business man. Legal effect has thus been given to mercantile usage which has become universal and explains that the "law merchant" is still in process of evolution.

GUARANTY AND SURETYSHIP.

A guarantor is any one who promises to answer for the debt, default or miscarriage of another person. A surety is one who, at the request of another, renders sure the performance of an express or implied contract. A guarantor is held liable under a separate contract and is indebted only upon default of the principal debtor. A surety is responsible from the beginning of the transaction and is connected jointly with the obligation of the principal debtor. Contracts of guaranty and contracts of suretyship extend back to old historical times where the Bible mentions that sureties were held to their obligations with the Hebrews. These two subjects are treated by every writer of negotiable instruments as contemporaneous by having originated at the same time and lived side by side to the present writing.

The law which involves the questions of guaranty and suretyship plays an important part in our present commercial life and forms a large constituent of the old common law. The complexity of modern commercial life; the extension of credit to one person by another upon being assured of a reimbursement by some third person; the advent of suretyship companies into a field hitherto occupied by individuals; the law of negotiable instruments, and the liabilities and rights of the several parties each are a phase of the subject of guaranty and suretyship which require a thoruogh understanding of the respective duties, liabilities and rights of the several parties by the attorney and counsellor who would serve his community to the best advantage.

Guaranty and suretyship embrace all forms of obligations to pay a debt or to answer for the default of another. Parties involved are called the principal,

Digitized by Google

the creditor and the promisor. A principal is the party who owes the debt. The creditor is the party to whom the debt is owed. The promisor is the party who promises to pay if the principal does not or can not. The promisor is called either the guarantor, the surety or the indorser, this depending altogether on the nature of the debt.

The distinction made between a guarantor, surety and indorser is as follows: A guarantor undertakes to pay if the principal debtor does not or can not. He does not join in the contract of his principal but engages in an independent undertaking. The guarantor promises that the principal debtor will perform his agreement and, if he does not, the guarantor will do so for him. The promisor is a guarantor when the promise is such that the principal will pay, that the debt is collectible or that the principal is solvent. In consequence, the liability is not immediate and does not fix upon the guarantor a liability from the beginning but only upon a default or failure of the principal debtor to do what he has agreed to do. Thus, you see that the liability of a guarantor does not start with the original agreement of the principal and his creditor except as a contingent liability which is established for the first time only by the default of the principal debtor. In some instances, the form of a guarantor's separate contract allows him the benefit of notice and a right to require of the creditor to exercise diligence in pursuing the principal to enforce the obligation, an advantage which a surety never has.

A surety undertakes to pay the debt of another. He joins in the original contract with the principal debtor and becomes an original party with him by promising to do the same thing at the same time which causes liability of the surety to be immediate and direct. He agrees that he will perform the principal's contract which fixes upon himself a responsibility from the beginning. Thus, any liability of the surety to pay starts with the original agreement.

An indorser is one who signs a negotiable instrument for the purpose of passing title. An accommodation indorsement before delivery generally results in the contract of a surety, while such an indorsement after delivery generally results in the contract of a guarantor except when negotiated in pursuance of some prior agreement.

To summarize, we may say that the respective liability of a guarantor, surety and indorser in dealing with negotiable instruments is as follows: A guarantor becomes liable only in case of failure on the part of the principal to pay the debt. A surety becomes liable as does the principal and may be sued either alone or jointly with the principal at maturity of the instrument. An indorser becomes liable only upon the failure of the principal to pay the debt after notice of non-payment has been given him.

CONTRACTS.

The term "contract" may be defined as an agreement to do or not to do a certain thing; an agreement between two or more parties to do or not to do a certain thing; or an agreement, upon a sufficient consideration, to do or not to do a certain thing. An obligation differs from a contract in that it is a legal duty by which a person is bound to do or not to do a certain thing created either by an act of the parties or by operation of law. A contract is created by an act of the parties only, unless a quasi-contract which is created by operation of law and may well be defined as an obligation instead.

In America, all laws may be considered as express and implied contracts. An express contract is one which is created by having its terms expressed in words. An implied contract is created by conduct of the parties as the law presumes its intention by reason and justice determined by the interpretation of its words which should convey their real or technical meaning clearly; and further determined by conduct of the parties. Thus, the Constitution may be considered as an express contract of the people and for the people, made by them directly, while the old common law may be considered as consisting of implied contracts of the people which arose from customs of the land, and from

Digitized by Google

the presumption by law that the people, upon entering into a civil compact, undertook to do what reason and justice dictated.

As the law includes all express and implied contracts, contracts may be considered as quasi laws binding on the parties by a certain subject matter, and enforced as such by public authority. A capacity to contract is presumed by law although it need not be proven affirmatively. Inability to contract is a matter of positive declaration, and the burden of proof rests on the one who alleges incompetency of the other. All persons are capable of contracting except minors, people of unsound minds and parties deprived of civil rights. Legal disability is based upon a defect of the mind. Parties who were incompetent under the old common law rules were infants, lunatics, married women, aliens, drunkards, outlaws, spendthrifts, seamen and slaves. Idiots, lunatics and maniacs were all included under the legal term "non compos mentis." An idiot is a natural born fool who unfortunately has never possessed a sound mind. A lunatic is one who, at some past time, has had a sound mind that has later become uniformly sound though subject to lucid intervals. A maniac is one who is mentally disabled and generally violent.

The Statute of Limitation which regulates actions on contracts was passed in the twenty-first year of the reign of King James I, who succeeded the throne in 1603. In substance, it enacted that all actions on account or contract should commence within six years after the cause of action had accrued. This statute discouraged procrastination of creditors and cautioned them not to sleep on their rights in that it refused to enforce stale claims. In some states of the United States, the Statute of Limitation has been materially changed. In California, such is the case as has been explained in Section 1624 of the Civil Code, and in Section 1973 of the Code of Civil Procedure.

A legal consideration is an essential and a moving cause which gives a contract its binding force. In theory of the law, all contracts must include a consideration although, in many cases, it exists only as a creature of imagination and as a mere invention to satisfy requirements of the law withstanding the fact that voluntary conveyances generally contain a recital which specify a consideration of one dollar, ten dollars or some other fictitious consideration to be "in lawful money of the United States, in hand paid, the receipt whereof is hereby duly acknowledged" although that particular amount of money is not usually paid as required by law.

In reality, intention of the parties to the subject matter and consideration is not always the controlling point in legal construction in that the parties may intend to accomplish what the law forbids. A contract "in restraint of trade" is unlawful unless it is a particular restraint of trade which specifies the sale of the good-will of a business and it may be redressed, in case of a breach of contract, either by money-damages, by an injunction in equity, or by both remedies. On the other hand, a general restraint of trade is unjust and demands redress to our people for a violation of the Anti-Trust Law which is supposed to regulate transactions in restraint of trade but, seemingly, this law is rarely enforced although adequate in its construction.

Betting is not permitted under the old common law, and it is illegal under the statutes passed in most states. Lotteries are declared nuisances. Usurious contracts which demand illegal interest are void. The same is true of a contract in restraint of marriage which is contrary to good morals. Contracts that corrupt legislation are prohibited by law. A contract "not to sue" is void against public policy. A person can not lawfully be deprived of a right of action. A right to demand justice is not transferrable although you may not get justice if you demand it. You have no more right to sell or exchange an inalienable right than you have to dispose of your life, liberty or pursuit of happiness. Although you may be deprived of your life, liberty or pursuit of happiness by some coersive method of which the management and control you have no voice. Such is often times the case.

As to their origin, rights are either primary or secondary. Primary rights include all those directly given or allowed by the law (rights ex lege), as a right of a parent to the service of his minor child. A secondary right is one

Digitized by Google

created by a contract (right ex contractu) between the parties, as a right of an employer to the services of his employee by operation of an express or implied contract.

AGENCY.

An agency is a legal relation created by law or by an express or implied contract in which one party, the agent, is authorized to represent and act for another called the principal in dealing with third persons. Thus, an agent is the one who represents another called the principal in dealing with third persons. A principal is the person who has power to ratify or confirm the agent's acts, and from whom the agent's authority is created. The principal is sometimes called an employer, chief or a constituent. Attorneys, clerks, auctioneers, brokers, bank officers, commission merchants, lobbyists, partners and masters of vessels all act in the capacity of an agent's relationship while dealing with third persons.

Attorneys and counsellors at law are agents to a certain extent. In some states, they are also sworn officers of the Supreme Court who hold places of high dignity and authority. An attorney-at-law is an officer of the court. An attorney-in-fact is a person appointed to do another person's business. This authorization is generally in the shape of a power of attorney although sometimes called letter of attorney which should be in the name of his principal. Transactions which require signatures of the principal and the attorney-in-fact should be made in the following form: John Doe, by Richard Roe, attorney-in-fact.

An agent's authority to do a certain thing carries with it an authority to make use of all the usual and necessary means to produce the purpose intended. For example: If an agent is authorized to sell property, he may receive the money of a sale. If he is to sell losses for an insurance company, he may arbitrate the claims. If he is to sell a chattel, he may warrant it as to quality. In fact, the authority of an agent covers all the established usages of trade pertaining to the business of his agency. If an agent uses money belonging to his principal for the purchase of real or personal property and takes the title or bill of sale in his own name, a court of equity may impose upon him either the obligation of giving a quiet title or have a trustee appointed for the benefit of his principal.

A public agent is not personally liable in the absence of fraud on a contract which he made for the benefit of the government or municipality which he represents. Persons dealing with public agents may always inquire into the measure and scope of the agent's authority in matters of record or when constructive notice is given to third persons. It is best to authorize an agent by as solemn an act and an act as binding as that which he is to perform. For example: If an agent enters into a written contract with a third party then his authority should also be in writing. The principal may confirm the act of an agent who has authority by which the principal is made personally liable for such an act.

Ordinarily, the agent binds the principal but does not obligate himself. Although an agent has no right to accept employment which involves the commission of a crime or tort. If so, he renders himself personally liable for any wrong act committed. He is also personally liable in a case of fraud on his part if the act is concealed from his principal and he has distinctly pledged such personal authority and responsibility. It is a general rule that the principal is bound by acts of the agent if created within the scope of his authority. But the principal can not be bound by an act of his agent which the agent has falsely asserted is within the scope of his authority.

The power of an agent may be revoked or terminated by expiration of the term for which it was created; by a subsequent act or agreement of the parties; by the destruction of his subject matter; by death of either the principal or agent; by renunciation of the agency by the agent; by incapacity of the agent to act, or by operation of law which may be caused by death, in-

Digitized by Google

sanity or bankruptcy. Death of the principal puts an end to the agency, being an instantaneous and unqualified revocation of his authority, and no notice is necessary to relieve an estate of the principal of any responsibility even on a contract in which the agent had entered into with a third person who was ignorant of his death.

BAILMENT.

Bailment is the delivery of goods to be held in trust upon an express or implied contract in that the trust shall be faithfully executed by the bailee. Bailment is also defined as a delivery of goods on an express or implied contract to be held in trust until returned. Or a transfer of personal property from the bailor to the bailee on an express or implied contract without transfer of ownership. And an express or implied contract by which an article of personal property is delivered by one person to another for any purpose other than a gift or sale.

By a bailment, everything passes ecept the transfer of ownership. By a gift or sale, absolute ownership of the property passes from one living person to another which creates a transfer of both ownership and possession. A bailment transfers possession but not ownership. The bailee is duty bound to use reasonable care and diligence in preserving the property of the bailor from loss or injury. It is not sufficient for the bailee to be as careful as he is about his own property for he must be exact and thoughtful in protecting rights of the bailor also. Reasonable care depends considerable on the nature of the property bailed. Coggs vs. Bernard is considered the leading case on this subject in which Lord Holt wrote a learned opinion on the entire subject of bailment. He employed technicalities of the Roman law in this opinion which is still retained by leading authors.

Historically speaking, the subject of "bailments" was of little importance but the progress of civilization has caused personal property to be of as much importance as real property, and in consequence the subject of transfer of possession without a transfer of ownership has taken its place with all other branches of the law in equal importance. Blackstone and Lord Holt classified bailments as follows: Depositum, commodatum, locatio et conductio, vadium, locatio operis faciendi, and mandatum.

COMMON CARRIERS.

Blackstone defines a common carrier as one who holds himself out to the public as undertaking to convey the goods of applicants from place to place. Code law defines it as follows: One who offers to the public to carry persons, property or messages (other than wire messages) is a common carrier of whatever he offers to carry. It is also defined as "any one who undertakes, for hire, to carry the person or property of all who choose to employ him."

A carrier is allowed to refuse an application when his carriage is full. The law holds common carriers to a very stringent liability in that he is termed an insurer of the goods enstrusted to him. He is answerable for all damages excepting those resulting from the acts of God, from the inherent nature of the goods carried, and from the act of a public enemy. Law presumes the carrier's negligence by proof of loss furnished by the plaintiff unless the defendant furnishes evidence which brings the loss within the excepted perils. An act of God signifies violence of nature such as storms, earthquakes and floods which operate without any assistance or invention on the part of a human being. To exonerate the carrier, the act of God must be the sole and immediate cause of the loss or injury.

A carrier can limit his common law liability by special agreement although the shipper is not compelled to enter into such a contract unless he so desires, but he can insist that his goods be taken and carried under the common law rule. By Federal Statute, contracts by which the carrier is exempted from liability for loss resulting from his own negligence are void when made in

Digitized by Google

transactions involving foreign or interstate commerce. It requires two or more persons to create a contract, hence signs publicly displayed by a carrier do not necessarily operate as a limitation of his liability unless agreed to by the shipper and the carrier. Tendencies of recent legislation are that we should enlarge the range of public control over transportation corporations. Our government has constitutional authority over interstate commerce through the Interstate Commerce Commission which is appointed by the President.

LEGAL ETHICS.

Lagal ethics comprise a system of rules for regulating the actions, duties and manners of an advocate. The American Bar Association has adopted a comprehensive code of legal ethics which contains the agreement of opinion of this body and is entitled to more weight than the opinion of an individual. In consequence, this code largely supersedes the various extensive works written on this subject.

A fair knowledge of the English language is sufficient for a general preparation in the study and practice of law. Latin, Greek and French are not so important as supposed. Law at one time was confusing. From the conquest of England in 1066 until the year 1363, legal proceedings were conducted in Norman French. In 1363, the statutes required that the proceedings be conducted in English and enrolled in Latin. This was a general rule until the year 1730 when an Act of Parliament required that the records be made in English also. Some of these terms remain and possess a definite and technical meaning.

Thus, convenience has invented phrases and terms from time to time which custom has sanctioned until they have become parts of our common speech, and have been coined such ridiculous terms as "legal ethics," etc., to explain the moral principles and codes of specialized rules that have been built upon them which are supposed to govern the conduct of an advocate in his advocacy. While many of these rules are but special applications for broad principles, others are strictly conventional usages of the particular profession illustrated by those rules which relate to the professional intercourse of practitioners, and while such rules have a decidedly ethical foundation, they are yet of that to which we ordinarily apply the term "etiquette."

To a certain extent, the term "legal ethics" is a misnomer in that it has nothing to do with law as law but relates wholly to professional conduct on the part of an advocate. For this reason, it may well be termed "professional ethics" instead. Any one who enters a particular profession does not assume any moral duties or acquire any exemptions distinguishable from those which apply to the rest of mankind. Truth, sincerity, fidelity, honesty and all other virtues are imposed alike upon the humble citizen and eminent advocate. Rules which prompt us to action are the same in either case.

However, any one called to the honorable position of an advocate should exhibit in and out of his profession the sterling qualities that constitute the highest excellence of a moral life. But this is a duty incumbent on every one whatever may be his avocation or position in society. The law does not concern itself with moral duties, nor does legal ethics properly extend to individual character.

Legal ethics may also be distinguished from the general rule in that while a violation of the moral code, as established by the conventions of society, will usually result in nothing more than social banishment, but to disregard the ethics of the bar may result in professional death. In society, we are kept within bounds of reason by no stronger a force than public opinion, while in the legal profession a summary jurisdiction is lodged in the courts to discipline offenders against morals and good conscience. To this extent, legal ethics assumes the nature of law.

But this disciplined power extends only to the attorney as an advocate and is exercised only with respect to his professional duties. As a citizen, the lawyer is not distinguishable from other men. His obligations to society are the same as those of every other citizen and, for any breach of a social obligation, he can be arraigned only at the bar of public opinion.

Digitized by Google

THE ADVOCATE.

An advocate is an attorney or any one who defends justice. Advocacy is the act of defense or support offered by the advocate. An attorney is an agent of a client or principal. He acts by virtue of a special appointment. An attorney-at-law is an officer of the court who may be employed by a person to act as his agent and counsellor. An attorney-in-fact is an agent who is duly authorized by his principal to transact general or particular business not of a legal character while dealing with a third person. A counsellor is any one who gives advice. The words "attorney" and "counsellor" are synonymous terms which are often times used conjunctively. The word "attorney" is also synonymous with the word "lawyer" but never used conjunctively.

It was during the reign of King Edward I, who succeeded the throne in the year 1272 A. D., that a professional class of attorneys first became prominent in England. During the many years of legal ethical changes, the lawyer never has been found and never will be found who has mastered legal lore in all its branches although a sufficient amount of learning is generally acquired to lend assistance and certainty to a client. Many an advocate upon admission to the bar, while thoroughly equipped with a knowledge of theory and principles of law, is quite ignorant of the practical side of his profession. The manner by which he can best acquire a knowledge of law and practice; the method by which he does his professional work; the ability to be acquainted with its different departments, and the main elements of his professional success all are subjects which should invite his early and earnest attention.

A young lawyer may find many valuable text books on the question of advocacy and legal procedure in general but he will find little connected with many matters of value in his professional work which would be of most value to him at this stage. Court practice, when referring in particular to the commencement of an action, is a difficult problem for the young advocate entering into the practice of his profession. Moot court work is of little importance when compared with actual court practice. The practice of law as administered in your own state should command attention after having acquired a general outline of common law learning. Each state has its local text books and statutes peculiar to that particular state which the young advocate should master. He should secure the special text books on practice as used in his home state and study them thoroughly. He should be familiar with special statutes on practice in the administration of estates, criminal procedure, special proceedings, etc.

Skill in practice is a leading requirement for a good attorney. Absence of this requisite is liable to lower his professional reputation. A client or the public will overlook an error in judgment much quicker than an error in legal matters already outlined on paper. Sometimes it is quite difficult to ascertain whether a judgment has been rendered correctly as this is only a matter of opinion, while a mistake in the question of written law is plain and sensitive. The necessity of an accurate knowledge of practice and of the manner by which papers in the case are to be prepared will be most appreciated by an advocate when he meets with those of his opponents who rely principally upon technical objections rather than upon merits of the case.

The rules of court are regulations of a definite character, and are the minor faculties which govern the practice and procedure of the tribunal by whom they were framed. Differnt courts have different sets of rules. In consequence, it seems quite essential that the advocate who practices in all the courts should be familiar with the rules of each court in that he might ellimiate any embarrassment in this respect. The rules should be studied thoroughly and well understood by a young attorney as they will be found very essential in the foundation of his practice. In fact, when in doubt, he should not hesitate to ask the court clerk or even the judge to give him the required information as to whether a rule of the court exists upon any given question of practice. And if it does exist, he should acquire information as to how it has been construed in matters similar to those in his case. If you expect to become a competent advocate, such small requirements of law should not be

Digitized by Google

overlooked because thoroughness in this respect might be the most beneficial at a time when legal ability and energy should be fresh for present emergencies.

By an act of Congress, the practice, pleadings, forms and modes of practice and procedure in the circuit and district courts of the United States, in civil cases other than admiralty and equity cases, shall conform as nearly as possible to the practice and procedure existing in like causes in the courts of records of the state where such federal courts are held. In consequence, a knowledge of practice and procedure of the state courts is sufficient for an advocate of that state.

The term "practice" embraces published rules of the various courts; the statutory provisions relating to practice in the courts; the commencement and prosecution of suits; the introduction of legal evidence and the methods of effecting proof therefrom; the joinder of parties; the amendment of pleadings; the decisions of the courts intermediate and of the last resort of the several states and of the United States; and a mass of unwritten law which has superseded the English common law and has grown in the American courts, which varies in its extent in the different courts of the different states, but similar in effect to our written law.

For the best results, a client's case should be conducted in a natural and manly presentation with as much clearness and concise language as the advocate can command. The young attorney should omit oratorical bellowing and all dramatic poses as such fallacy and falseness disgusts honest jurors and will defeat the case. The word "advocate" implies that a defense of justice should be made in a fair minded manner.

That a lawyer occupies one of the most important positions in society is a truism admitted without denial. His duties are not confined to those relating to the preparation and trial of cases but extend to the associations and connections men have with one another in all the varied affairs of life. Commencing with the advice and direction he gives to those who act as guardians of infants throughout the life-time of almost every person, as well as in the settlement of their estate after death, the lawyer is called upon to direct and to manage in no small degree the affairs of men in all of their domestic, personal and commercial relations.

In consequence, it may well be termed a noble profession and one into which its members should enter advisedly, conscientiously, soberly and with all due respect to the dignity which becomes the position of those in whom great confidence is necessarily reposed, and from whom much is expected. The essence and nature of the profession holds its members to the strictest integrity. No one, more than the advocate himself, realizes the imperative necessity of a universal obedience to this rule of conduct. Although, from ignorance or thoughtlessness, there are those who impute to the profession a reputation antagonistic to this quality, yet it will be admitted by all fair-minded men that members of the legal profession possess the attribute of integrity in as high a degree and among as many of its members as is found in any other walk in life.

Other than the office attorney and the court attorney, we have two distinct classes, viz: The advocate skilled in all the flowery eloquence of ancient and madieval times, overflowing with formal discussions upon legal theories. And the advocate who is built from the ground floor with brain, brawn and a robust heart compelling a voice to ring out clear and free when impelled with the unanswerable logic of necessity and progress, or struck and wrung by the pleadings of human oppression. The one is turned out by an extended course in dead languages composed of "ists," "isms" and "ologies" with years spent in studying theories designed to deceive. While the other is a self-made man turned out from the farm, mine or workshop by having utilized spare moments in the study of law and its requirements.

The personalities of Seward and Lincoln illustrate the two types of American advocates. William H. Seward was coached and crammed in the institutions of learning, and was inclined to look with contempt and scorn at his

Digitized by Google

more humble brother from the plains, our illustrious Abraham Lincoln, who was home-made and his ideas of right and wrong were God-given and unbiased by shallow theories of human institutions. Judge for yourself as to whose influence was the greater, and whose words were most influential in bringing about a general recognition of a loyal principle which is now fundamental throughout the land. When you have decided whether the boastful and lofty orations of Seward, or whether the sublime yet unboastful words of Lincoln; and whether the cultured Mr. Seward or whether our awkward but true-hearted executive, Abraham Lincoln, were more serviceable to the nation in its darkest hours, you have settled the debate and strife waged between a college-trained and a home-trained attorney.

MAXIMS OF JURISPRUDENCE.

Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

Acquiescence in error takes away the right of objecting to it.

An interpretation which gives effect is preferred to one which makes void.

Between rights otherwise equal, the earliest is the preferred.

Between those who are equally in the right, or equally in the wrong, the law does not interpose.

For every wrong there is a remedy.

He who consents to an act is not wronged by it.

He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

He who takes the benefit must bear the burden.

Interpretation must be reasonable.

No one can take advantage of his own wrong.

No one should suffer by the act of another.

No man is responsible for that which no man can control.

One must not change his purpose to the injury of another.

One must not use his own rights as not to infringe upon the rights of another.

One who grants a thing is presumed to grant also whatever is essential to its use.

Particular expressions qualify those which are general.

Superfluity does not vitiate.

The law helps the vigilant before those who sleep on their rights.

The law respects form less than substance.

The law never requires impossibilities.

The law disregards trifles.

The greater contains the less.

That is certain which can be made certain.

Time does not confirm a void act.

The incident follows the principal, and not the principal the incident.

That which does not appear to exist is to be regarded as if it did not exist.

That which ought to have been done is to regarded as done in favor of him to whom and against him from whom performance is due.

When the reason of a rule ceases so should the rule itself.

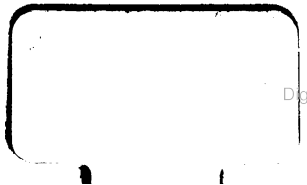
Where the reason is the same, the rule should be the same.

Where one or two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

Digitized by Google

Digitized by Google

Digitized by Google


Digitized by Google

Digitized by Google